

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-933(PB)/2019

IN THE MATTER OF:

EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED
.....FINANCIAL CREDITOR/PETITIONER

V.

CLC INDUSTRIES LIMITED
.....CORPORATE DEBTOR/RESPONDENT

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Judgment delivered on 03.01.2020

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

MS. SAROJ RAJWARE
HON'BLE MEMBER (TECHNICAL)

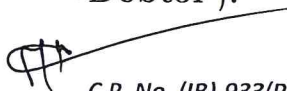
PRESENTS:

For the Petitioner: Mr. Prateek Kushwaha, Ms. Bhumika & Mr. R.P. Agarwal, Advocates
For the Respondent: Ms. Purti Marwaha & Ms. Henna George, Advocates

M.M. KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Edelweiss Asset Reconstruction Company Limited has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of CLC Industries Limited (for brevity 'the Corporate Debtor').


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2. The 'Corporate Debtor'-CLC Industries Limited was incorporated on 25.11.1991. The identification number of the Corporate Debtor is L74899DL1991PLC138153 and its registered office is situated at A-60, Okhla Industrial Area, Phase II, New Delhi-110020.

3. The 'Financial Creditor'-Petitioner has proposed the name of Interim Resolution Professional, Mr. Subhash Kumar Kundra with the address C-4-E/135, Janak Puri, New Delhi-110058, email id skkundra@sgaindia.in. His Registration number is IBBI/IPA-002/IP-N00399/2017-18/11174. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. In the petition, the Financial Creditor has given the details of financial debt granted to the Corporate Debtor with the dates of disbursement. A perusal of part IV of the application would show the following particulars of financial debt:

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	The original lender was ICICI Bank Limited who had provided the

	<p>following credit facilities to the Corporate Debtor.</p> <ol style="list-style-type: none"> 1. Rupee Term Loan of Rs. 105,00,00,000/- sanctioned vide CAL No. 606399 dated February 15, 2006 (RTL-I). Copy of the said CAL is annexed and marked as ANNEXURE-6 <p>Details of Disbursement: <i>As per Statement of Account</i></p> <ol style="list-style-type: none"> 2. Rupee Term Loan of Rs. 50,00,00,000/- sanctioned vide CAL No. 702000 dated July 06, 2006 (RTL-II) Copy of the said CAL is annexed and marked as ANNEXURE-7 <p><i>As per Statement of Account</i></p> <ol style="list-style-type: none"> 3. Working Capital Term Loan of Rs. 82,30,00,000/- sanctioned vide CAL No. 63062 dated December 2 2013 (WCTL) Copy of the said CAL is annexed and marked as ANNEXURE – 8 <p>Details of Disbursement: <i>As per Statement of Account</i></p>
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The aforesaid details would show that the different loan facilities were extended to the Corporate Debtor to the extent shown in the aforesaid tables as stated in the petition itself.



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5. In column 2 of part IV the amount claimed to be in default and the date on which the default had occurred, have been mentioned. According to the averments made by the Financial Creditor- Edelweiss Asset Reconstruction Company Limited the aforesaid facilities availed by the Corporate Debtor are overdue and total amount in default as on 15.03.2019 is Rs. 1,04,39,98,947.78/- (Rupees One Hundred Four Crore Thirty-Nine Lakhs Ninety Eight Thousand Nine Hundred Forty Seven and Seventy Eight Paisa).

6. The details of the security held by, or created for the benefit of 'financial creditor'-Edelweiss Asset Reconstruction Company Limited along with the certificate of registration of charge issued by the Registrar of Companies have been placed on record which fulfils the requirements of Section 77 & 78 of Companies Act, 2013.

7. The Petitioner-Financial creditor has asserted that the account of the Corporate Debtor was classified as NPA on 30.09.2015. In view of the repeated defaults on the part of the Corporate Debtor to comply with the schedule of repayment of the principal and interest dues, the Financial Creditor issued a Recall Cum Guarantee Invocation Notices dated 21.03.2016 (Annexure-23) to the Corporate Debtor, Guarantors and Security Providers.



Subsequently a notice dated 07.04.2016 (Annexure-24) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 & letter dated 09.04.2018 (Annexure-28) were sent by the Petitioner to the Corporate Debtor, its Guarantors as well as Security Providers but inspite of all such attempts they failed to clear the unpaid debt/liability.

8. A certificate under Section 2A & 2(8) of the Bankers Book Evidence Act have been filed by the Financial Creditor along with print out of account statements relating to the Corporate Debtor in which financial debt was transferred by the Financial Creditor. The said certificate further disclosed sufficient compliance with the relevant provisions of the Bankers' Book Evidence Act. It is stated by the officer that the statement of accounts filed by the financial creditor are true and correct copies of the bank records maintained by the Financial Creditor in its computer.

9. The Financial Creditor also placed on record a list of all the financial facilities granted by the Financial Creditor to the Corporate Debtor along with the copies of the said Financial Contracts.



10. In response to the notice of the petition the respondent has filed reply. Except other pleadings, in point Nos. 3 to 6 of the preliminary objections the assertions made are set out below for facility of reference:-

“It may be pointed out that after the filing of the aforesaid O.A., the Respondent Company entered into an amicable settlement with the Petitioner with reschedulement of the loan as per document No. Reference No. Edel ARC/3682/2016-2017 namely ‘Restructuring of Financial Assistance’ dated 13.02.2017 (hereinafter referred to as the “Settlement Document”). A copy of the said Settlement Document dated 13.02.2017 is attached herewith as **Annexure A-1.**

Accordingly, since **there is novation of contract in view of the settlement** being entered into between the parties, the Petitioner cannot claim any liability in terms of the Assignment Agreement dated 29.06.2016.

Some issues arose between the parties regarding the aforesaid settlement.



Without admitting the liability, it may be pointed out that for the purpose of an amicable resolution of the issues, **the Company has submitted a restructuring proposal on 12.07.2019 to Asset Reconstruction Company India Ltd. (ARCIL) which holds majority stake of 78%.** A copy of the restructuring proposal submitted by the Company on 12.07.2019 is attached here with as **Annexure A-2.**”

11. Subsequently an affidavit in rejoinder has been filed on behalf of the Petitioner to the reply/objections by the Respondent. Along with the said affidavit copies of the letters dated 03.02.2017 and 15.02.2017 [(Annexure A (colly)] of the Respondent Company have been placed on record. It has been highlighted that at the request of the Respondent Company vide aforesaid letter dated 03.02.2017, the Petitioner approved restricting of debt vide letter dated 13.02.2017 (Annexure A-1) and accepted the same vide letter dated 15.02.2017 (at pg. 6). However, the Respondent Company failed to meet the commitments under the said restructuring and consequently the Petitioner revoked the restructuring vide letter dated 06.10.2017 (Annexure-B).

12. At this stage it would be profitable to read the relevant para of the said letter of revocation of restructuring which are set out below:

“EARC vide letter no. EdelARC/3682/2016-17 dated February 13, 2017 (“Restructuring Letter”) entered into restructuring for the Existing Liability, which was duly accepted by SIL. Table given below shows details of the instalments paid/overdue:

Sr No.	Amount	Due Date	Paid/Overdue
1	Rs. 10,00,000/-	On approval	Paid on 09-Feb-2017
2	Rs. 11,00,000/-	25-Mar-2017	Paid on 24-Mar-2017
3	Rs. 62,67,085/-	15-Jun-2017	Overdue
4	Rs. 75,86,471/-	15-Sep-2017	Overdue

13. Having heard learned counsels for the parties at considerable length we find that restructuring proposal vide letter dated 03.02.2017 regarding settlement of its outstanding debt was sent by the Respondent. Subsequently vide letter dated 13.02.2017 the petitioner approved restructuring of debt of the Respondent. The total liability which was determined by way of restructuring was to be paid in four tranches i.e. (i) Rs. 10,00,000/- on the approval, (ii) Rs. 11,00,000/- on 25.03.2017, (iii) Rs. 62,67,085/- on 15.06.2017 and (iv) Rs. 75,86,471/- on 15.09.2017. The instalment which fell due on June 15, 2017 was not cleared within the default period i.e. 30 days as stipulated in clause 10 of the restructuring letter. As a result, restructuring dated 13.02.2017 was revoked by the

Petitioner and a letter of revocation was issued to the Corporate Debtor. It is pertinent to note that in any case we are not to determine the amount of unpaid debt (default) and it shall be open for determination by Committee of Creditors.

14. Further in view of the candid admission of debt made by the Respondent by way of restructuring letter dated 13.02.2017 coupled with other documents more particularly 'Charges Registered' obtained from the website of Registrar of Companies confirming creation of mortgage over the properties in order to secure the loan, execution of the loan agreement, it stands established that the amount claimed is due and payable.

15. We further find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in our order dated 27.11.2018 rendered in the case of ECL Finance Limited vs. Digamber Buildcon Pvt. Ltd. (IB- 1039(PB)/2018).

16. After a reading of Section 7 of the Code along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete.

The IRP proposed does not have any disciplinary proceedings pending against him.

17. As a sequel to the above discussion, this petition is admitted and Mr. Subhash Kumar Kundra is appointed as an Interim Resolution Professional.

18. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code.

19. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses

to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

21. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

22. Before parting we must notice the complaint made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate

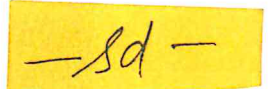


Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.

23. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.



(M.M. KUMAR)
PRESIDENT



(MS. SAROJ RAJWARE)
MEMBER (T)

03.01.2020
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