

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 664/IB/MB/2022

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

In the matter of

IDBI Trusteeship Services Limited

Asian Building, Ground Floor, 17 R.
Kamani Marg, Ballard Estate,
Mumbai – 400001, Maharashtra

**..... Financial Creditors/
Petitioners**

Vs

**SKIL Shipyard Holdings Private
Limited**

SKIL House, 209, Bank Street Cross
Lane, Fort, Mumbai – 400023,
Maharashtra

..... Corporate Debtor

Order Pronounced On: 09.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances: -

For the Petitioner: Mr. Shyam Kapadia, Advocate a/w Ms. Jyoti A Singh and Mr. Sakil Ansari, Advocates i/b AJA Legal

For the Respondent: Sr. Counsel Mr. Vikram Nankani, Advocate a/w Mr. Kunal Mehta, Mrs. Manik Joshi, Mr. Mantul Bajpai, Mr. VrushabhVig, Mr. Vikrant Nalavade Ms. Priyam Sharma i/b Crawford Bayley & Co

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by **IDBI Trusteeship Services Limited** hereinafter called as the ("**Financial Creditors**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **SKIL Shipyard Holdings Private Limited** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Financial Debt of Rs. 142,19,34,390/- including interest.
2. The Financial Creditor has mentioned that the Corporate Debtor, SKIL Shipyard Holdings Private Limited is a company incorporated under the Companies Act, 1956 and is in the business of constructions. The Corporate Debtor had issued unlisted 275 Non-Convertible Debentures ("NCDs"/ "Debentures") of face value of INR 1,00,00,000/- (Rupees One Crore) each which were originally subscribed by Ecap Equities Limited ("EEL/Original Debenture Holder").
3. The Financial Creditor, IDBI Trusteeship Services Limited is a company incorporated under the Companies Act, 1956 and is acting as debenture

trustee ("Debenture Trustee") for the aforesaid NCDs under the trustee agreement dated December 11, 2014 ("Debenture Trustee Agreement") ("Annexure 1"). Pursuant thereto, a debenture trust deed dated December 24, 2014 ("Debenture Trust Deed") ("Annexure 2") as amended by amendatory debenture trust deed dated March 20, 2015 ("Amendatory Debenture Trust Deed") ("Annexure 3") was executed amongst the Corporate Debtor in its capacity as the Issuer and first mortgagor, Soothing Trading Company Pvt. Ltd in its capacity as the second mortgagor and the Debenture Trustee on the terms and conditions set out in Annexure thereto.

4. The Original Debenture Holder transferred the said NCDs to Edelweiss Finvest Limited on February 22, 2021 ("Annexure 7"). The said NCDs were later assigned to Edelweiss Asset Reconstruction Company Limited (Acting in its capacity as Trustee of the EARC Trust SC-428) ("Debenture Holder") by Edelweiss Finvest Limited (EFL/ First Assignee Debenture Holder") vide an Assignment Agreement ("Annexure 8") dated March 18, 2021.
5. The Financial Creditor has further mentioned that the Corporate Debtor defaulted in payment of coupon on the Debentures due on May 30, 2017 and the default subsisted. Thereafter, the Debenture Trustee issued several notices dated June 20, 2017 ("Annexure 9"), October 25, 2017 ("Annexure 10") and April 18, 2018 ("Annexure 11") to the Corporate Debtor amongst others to pay the entire outstanding obligation.
6. Accordingly, on account of continuous default on the part of the Corporate Debtor, the Debenture Trustee issued a notice dated March 11, 2019 ("Annexure 12") thereby calling upon the Corporate Debtor amongst others to pay the entire outstanding obligation together with interest along with other contractual interests. The reference of failure on the part of the Corporate Debtor to honour the terms of the one-time settlement ("OTS") between the parties, leading to withdrawal of consent of the said OTS has also been given in the aforesaid letter. Thereafter, on request from the Corporate Debtor, more time was granted for payment of the outstanding

amounts and fulfilment of its contractual obligations. However, upon failure of the Corporate Debtor to share signed term sheet and definite documents for fund raising on and make due payment until August 27, 2019, the Debenture Trustee vide its notice dated August 27, 2019 ("Annexure 13") withdrew the standstill date and called upon the Corporate Debtor amongst others to pay the entire outstanding obligation as per the notice dated March 11, 2019.

7. The Financial Creditor has further submitted that the Corporate Debtor along with personal guarantors and security providers entered into settlement agreement with the Original Debenture Holder and Debenture Trustee dated October 1, 2020 ("Settlement Agreement") ("Annexure 14") whereby the parties thereto agreed to jointly and severally pay a total amount of INR 85,00,00,000/- (Rupees Eighty Five Crore Only) towards full and final settlement of all the Original Obligations in accordance with the terms and conditions set out in the Annexure thereto. Subsequently, a Supplemental Agreement ("Annexure 15") to the Settlement Agreement dated November 18, 2020 was executed between the Corporate Debtor along with personal guarantors and security providers with the Original Debenture Holder and Debenture Trustee whereby the payment of settlement installments as per the terms of Settlement Agreement were revised.
8. Thereafter, in accordance with the Settlement Agreement and Supplemental Agreement to Settlement Agreement, the Corporate Debtor made payment of the first installment payment well in time. However, the Corporate Debtor defaulted in the payment of second installment payment even after the expiration of cure period on November 29, 2021. Consequently, there as a default in payment of the settlement installment on October 1, 2021. Accordingly, the Debenture Holder issued a letter dated January 27, 2022 ("Annexure 16") for cancellation of the Settlement of the financial assistance and thereby called upon the Corporate Debtor amongst others to make payment of the amount due as per the contractual obligation along with interests contractually due.

9. It is further submitted in the petition that further, a notice ("Annexure 37") dated February 1, 2022 was issued by Financial Creditor to Corporate Debtor amongst others under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 for enforcement of securities more particularly mentioned in the Annexure.
10. The Debenture Trustee vide notice dated February 10, 2022 ("Annexure 17") recalled the outstanding sum of INR 142,19,34,389/- (Rupees One Hundred Forty Two Crores Nineteen Lakh Thirty Four Thousand Three Hundred and Eighty Nine) as on January 25, 2022 from the Corporate Debtor (as per instructions of the Debenture Holder) amongst others being the security companies, guarantors and, pledgors immediately. Further, the guarantees were invoked and security companies, guarantors and pledgors were cautioned to not transfer, lease, license or otherwise create any third party right, charge or encumbrance over any of the secured assets.
11. In view of the above, the Financial Creditor has filed the present application against the Corporate Debtor for and on behalf of the Debenture Holder for the payment of outstanding dues as per the contractual obligation along with interests contractually due as the default subsists.
12. It is further stated that the Corporate Debtor defaulted in payment of coupon on the Debentures due on May 30, 2017 and the default subsisted. Accordingly, instructions of the Debenture Holder amongst the Debenture Trustee vide notice bearing RefNo.: ITSL/OPR/17-18/2404 dated June 20, 2017 called upon the Corporate Debtor (as per others being the security companies to pay the outstanding amounts and create the additional security, immediately. A copy of the notice dated June 20, 2017 issued by the Debenture Trustee on instructions of the Debenture Holder is annexed herewith as Annexure 9.

13. Despite the same, the Corporate Debtor willfully failed and neglected to pay the overdue coupon/interest demanded under the aforesaid notice dated June 20, 2017. In view of the subsisting default, the Debenture Trustee vide notice bearing Ref. No: ITSL/OPR/17-18/5807 dated October 25, 2017 called upon the Corporate Debtor (as per instructions of the Debenture Holder) amongst others being the security companies to pay the outstanding amount of Rs 6,46,94,767/- (Rupees Six Crore Forty Six Lakh Ninety Four Thousand Seven Hundred and Sixty Seven only) towards the overdue coupon immediately and not later than 1 day from the date of said notice. A copy of the notice dated October 25, 2017, issued by the Debenture Trustee on instructions of the Debenture Holder is annexed herewith as Annexure 10.
14. Thereafter, on occurrence of multiple events of default under the Debenture Trust Deed, the Debenture Holder/ Debenture Trustee became entitled to accelerate the redemption of NCDs as per the Debenture Trust Deed. Thus, on instructions of the Debenture Holder, the Debenture Trustee issued notice bearing Ref. No: ITSL/OPR/18-19/632 dated April 18, 2018 to the Corporate Debtor amongst others to pay the entire outstanding obligation of INR 1,33,10,28,549/- (Rupees One Hundred and Thirty Three Crore Ten Lakh Twenty Eight Thousand Five Hundred and Forty Nine) as on April 16, 2018 together with interests and other monies payable. A copy of the Notice dated April 18, 2018 issued by the Debenture Trustee on instructions of the Debenture Holder is annexed herewith as Annexure 11.
15. Accordingly, on account of continuous default on the part of the Corporate Debtor, the Debenture Trustee issued notice bearing Ref No.: ITSL/OPR/18-19/12178 dated March 11, 2019 (as per instructions of the Debenture Holder) thereby calling upon the Corporate Debtor amongst others to pay the entire outstanding obligation of INR 1,39,50,50,904/- (Rupees One Hundred and Thirty Nine Crore Fifty Lakh Fifty Thousand Nine Hundred and Four) as on February 28, 2019 together with interest from March 1, 2019 alongwith other contractual interests. The reference of

failure on the part of the Corporate Debtor to honour the terms of the one-time settlement ("OTS") between the parties, leading to withdrawal of consent of the said OTS has been given in the aforesaid letter. A copy of the notice dated March 11, 2019 issued by the Debenture Trustee is annexed herewith as Annexure 12.

16. Thereafter, on request from the Corporate Debtor more time was granted for payment of the obligations. However, upon failure of the Corporate Debtor to share signed term sheet and definite documents for fund raising on or before the standstill date, the Debenture Trustee vide its notice bearing Ref No.: Ecap/SF/173 dated August 27, 2019 called upon the Corporate Debtor amongst others to pay the entire outstanding obligation as per the notice dated March 11, 2019. A copy of the notice dated August 27, 2019 is annexed herewith as Annexure 13.
17. Subsequently, the Corporate Debtor along with personal guarantors and security providers entered into settlement agreement with the Original Debenture Holder and Debenture Trustee dated October 1, 2020 ("Settlement Agreement") whereby the parties thereto agreed to jointly and severally pay a total amount of INR 85,00,00,000/- (Rupees Eighty Five Crore Only) towards full and final settlement of all the Original Obligations (as defined in the Settlement Agreement) in accordance with the terms and conditions contained in the said Settlement Agreement. A copy of the Settlement Agreement dated October 1, 2020 is annexed herewith as Annexure 14.
18. A Supplemental Agreement to the Settlement Agreement dated November 18, 2020 was entered into between the Corporate Debtor along with personal guarantors and security providers with the Original Debenture Holder and Debenture Trustee whereby the payment of settlement installments as per the terms of Settlement Agreement were revised. A copy of the Supplemental Agreement to Settlement Agreement dated November 18, 2020 is annexed herewith as Annexure 15. Pursuant to the Settlement Agreement and Supplemental Agreement to Settlement Agreement, the

Corporate Debtor made payment of the first installment payment well in time, however, it defaulted in the payment of second installment payment which was due on October 1, 2021. Even though cure period of 60 days expired on November 29, 2021, the Corporate Debtor failed to make payment of the second installment payment.

19. Accordingly, the Debenture Holder vide letter bearing reference no. EdelARC/3177/2020-21 dated January 27, 2022 cancelled/revoked the Settlement of the financial assistance and thereby called upon the Corporate Debtor and other concerned to jointly and severally make payment of the amount due as per the contractual obligation along with interests contractually due. A copy of letter of cancellation of Settlement of financial assistance dated January 27, 2022 is annexed herewith as Annexure 16.
20. The Debenture Trustee vide notice bearing Ref. No: ITSL/OPR/2021-22/39500 dated February 10, 2022 recalled the outstanding sum of INR 142,19,34,389/- (Rupees One Hundred Forty Two Crores Nineteen Lakh Thirty Four Thousand Three Hundred and Eighty Nine) as on January 25, 2022 from the Corporate Debtor (as per instructions of the Debenture Holder) amongst others being the security companies, guarantors and, pledgors immediately and not later than 3 days from the date of said notice. Further, the guarantees were invoked and security companies, guarantors and, pledgors were cautioned to not transfer, lease, license or otherwise create any third party right, charge or encumbrance over any of the secured assets. A copy of the notice dated February 10, 2022, issued by the Debenture Trustee on instructions of the Debenture Holder is annexed herewith as Annexure 17. Thus, the default occurred on October 1, 2021 and the same is still continuing till the date of this Application.

Reply filed by the Corporate Debtor: -

21. The Corporate Debtor has submitted in the reply that pursuant to the debentures (NCDs) issued by the Corporate Debtor, E-Cap Equities Limited ("E-Cap") subscribed to 275 NCDs of the face value of Rs. 1 Crore each. Eventually, on 1st October 2020 and 18th November 2020, E-Cap, the Corporate Debtor, the security providers and IDBI Trusteeship Services Ltd. i.e. the Petitioner herein, entered into a Settlement Agreement and a Supplemental Agreement to Settlement Agreement by which, the Parties entered into a onetime settlement subject to the terms and conditions stipulated therein. Pertinently, whilst clause 12.12 of the Settlement Agreement recognized E-Cap's right to transfer all or any part of the NCDs to any of its group companies, this right was conditional and subject to the transferee executing a Deed of Adherence in the form and substance as appearing in Schedule 8 to the Settlement Agreement.
22. It is an undisputed position that the Corporate Debtor paid the first instalment under the Settlement Agreement much in advance of the stipulated timeframe. A sum of Rs. 34.14 Crores was paid on 18th November 2020 itself. This position is also undisputed.
23. As per the Settlement Agreement, the second instalment i.e. a sum of Rs. 20 Crores was payable on 1st October 2021. However, E-Cap and its group companies are in gross violation of mandatory provisions of the Settlement Agreement, and which made it impossible for the Corporate Debtor to pay the 2nd instalment.
24. The Corporate Debtor has further submitted that by a letter dated 23rd February 2021, E-Cap informed the Corporate Debtor that it had transferred all of the 275 NCDs to Edelweiss Finvest Ltd. It is, pertinent to note that no document was provided to substantiate the assertion of this transfer and the letter was not accompanied with a duly executed Deed of Adherence signed by all the signatories of the Settlement Agreement as well as by Edelweiss Finvest Ltd., being the so-called transferee, in the form prescribed in Schedule 8 to the Settlement Agreement. A copy of the E-Cap

letter dated 23rdFebruary 2021 is annexed hereto and marked as Exhibit "A". It is pertinent to note that even in the Petition, no document has been relied upon which would demonstrate the said transfer of the NCDs from E-Cap to Edelweiss Finvest Ltd.

25. In light of the above non-compliance with the provisions of the Settlement Agreement, the Corporate Debtor did not recognize Edelweiss Finvest Ltd as the new holder of the NCDs. As far as the Corporate Debtor was concerned, E-cap continued to hold the NCDs.
26. By a letter dated 22ndMarch 2021, the Corporate Debtor was informed by the Petitioner that Edelweiss Finvest Ltd had further transferred all the NCDs to EARCSC Trustee-428 which it referred to as a securitization and asset reconstruction company having its registered office at Edelweiss House, Mumbai. A copy of this letter dated 22nd March 2021 is annexed hereto and marked as Exhibit "B". Again the stipulated Deed of Adherence was not executed by the so-called transferee EARCSC Trustee-428 and as far as the Corporate Debtor was concerned, E-Cap continued to remain the holder of the NCDs.
27. On 31stMarch 2021, Edelweiss Asset Reconstruction Company Ltd addressed a letter to the Corporate Debtor then intimating it that Edelweiss Finvest Ltd had transferred the NCDs to Edelweiss Asset Reconstruction Company ("EARC") in its capacity as the trustee of the EARC Trust and called upon the Corporate Debtor to substitute its name in place of Edelweiss Finvest Ltd. in the Corporate Debtor's records.
28. In light of the uncertainty vis-a-vis whom to recognize as the NCD holder (created by the aforesaid situation), the Corporate Debtor was not able to make the payment of the 2nd instalment by 1st October 2021. Even E-Cap, Edelweiss Finvest Ltd. and EARC recognized this. E-Cap contended that it had transferred the NCDs to Edelweiss Finvest Ltd. who claimed further transfer to EARC. However, neither Edelweiss Finvest Ltd. nor EARC executed the stipulated Deeds of Adherence. Hence, the Corporate Debtor was not in a position to make payment of the 2nd instalment since it did not

know whether either Edelweiss Finvest Ltd. or EARC would abide by and honour the terms of the Settlement Agreement read with the Supplemental Agreement.

29. It is further submitted that on or about 17th December 2021, the holding company of the Corporate Debtor i.e. SKIL Infrastructure Ltd. received two Deeds of Adherence one dated 15th December 2021 and another dated 16th December 2021 in purported compliance with the requirements of Clause 12.12 read with Schedule 8 of the Settlement Agreement. Copies of these Deeds of Adherence are annexed hereto and marked as Exhibit "C" and "D", respectively. A perusal of the Deeds of Adherence demonstrates that the same contain several deficiencies and were not in line with the agreed draft of the Deed of Adherence attached to the Settlement Agreement.
30. Abruptly, on 23rd December 2021, EARC addressed a letter to the Corporate Debtor cancelling and revoking the Settlement Agreement read with the Supplemental Agreement and asserted that in light thereof, EARC was entitled to reinstate and recover the original contractual dues. A copy of the notice dated 23rd December 2021 is annexed hereto and marked as Exhibit "E".
31. In response to the Deeds of Adherence earlier forwarded, by an email dated 24th December 2021, the Corporate Debtor informed the representative of E-Cap that the Corporate Debtor was unable to accept the Deeds of Adherence from Edelweiss Finvest Ltd. and EARC and set out the deficiencies in the Deeds of Adherence. A copy of this email dated 24th December 2021 is annexed hereto and marked as Exhibit "F".
32. By a letter dated 3rd January 2022, the Corporate Debtor informed EARC that there was still a failure to adhere to Clause 12.12 of the Settlement Agreement and no Deed of Adherence as per the Schedule 8 thereto had been executed and furnished. A copy of the letter dated 3rd January 2022 is annexed hereto and marked as Exhibit "G".

33. That EARC and Edelweiss Finvest Ltd. accepted the above contention of the Corporate Debtor is apparent from the fact that on 13th January 2022, E-Cap forwarded to the Corporate Debtor, two revised Deeds of Adherence signed by Edelweiss Finvest Ltd. and EARC. Copies of these Deeds of Adherence along with the covering letter are annexed hereto and marked as Exhibits "H" and respectively. According to the Corporate Debtor, the forwarding of these Deeds of Adherence constitutes an acceptance on the part of EARC that its earlier cancellation / revocation dated 23rd December 2021 was null and void.
34. Subsequently the emails dated 19th January 2022, 24th January 2022, 27th January 2022 and letter dated 2nd February 2022 exchanged between the Corporate Debtor and E-Cap demonstrates that neither Edelweiss Finvest Ltd. nor EARC have fulfilled their obligation of executing Deeds of Adherence in terms of Schedule 8 read with Clause 12.12 of the Settlement Agreement. with the result that till date, the original debentures holder E-Cap is the only entity that the Corporate Debtor recognizes as the holder of the NCDs.
35. According to the Corporate Debtor vide letter dated 6th April 2022, the Corporate Debtor had responded to the invocation of guarantee notice dated 10th February 2022 stating that it does not recognize EARC as a debenture holder and called upon the Petitioner to provide evidence of how EARC is claimed to be a debenture holder. Since EARC is not a recognized debenture / NCD holder, therefore, no question arises of the Petitioner instituting the recent Petition or seeking recover the purported dues on its behalf.
36. It is further stated in the reply that since the NCDs are originally issued to E-Cap, for EARC to claim itself as being a holder of NCDs, there would have to be a valid transfer of the NCDs in its favor. In this regard, it is pertinent to note that it is not even the case of EARC that it acquired. The NCDs directly from E-Cap. EARC claims title to the NCDs from a prior transferee of the NCDs namely Edelweiss Finvest Ltd. There is nothing on

record to justify how the NCDs stood transferred to Edelweiss Finvest Ltd. from E-Cap. As such, until and unless the Petitioner first proves that the NCDs were originally transferred to Edelweiss Finvest Ltd., no question arises of EARC claiming to be the holder of NCDs. Mere execution of the Assignment Agreement dated 18th March 2021 executed between Edelweiss Finvest Limited and EARC Limited would not confer upon EARC, title to the NCDs. This is because, the Assignment Agreement proceeds on the basis that EARC was a valid transferee of these 275 NCDs. If that transfer is not proved and is invalid, EARC can never claim its entitlement on the basis of the Assignment Agreement.

37. The Respondent submits that for the Assignment Agreement dated 18th March 2021 to have any effect in law, and for any transfer of NCDs to Edelweiss Finvest Ltd. and onward transfer to EARC being valid, both Edelweiss Finvest Ltd. as well as EARC were required to execute Deeds of Adherence mandated by Schedule 8 read with Clause 12.12 of the Settlement Agreement.

38. However, neither Edelweiss Finvest Ltd. nor EARC have executed and furnished valid Deeds of Adherence. Therefore, EARC cannot claim to be the holder of NCDs. Since the Assignment Agreement is an unregistered document, it cannot be looked at by this Hon'ble Tribunal in light of the bar of Section 49 of the Registration Act, 1908. A bare perusal of the terms of the Agreement plainly indicates that it is a document which requires compulsory registration as per Section 17(1) of the Registration Act. As such, the Petition is incompetent since it is filed by the Petitioner on behalf of the entity which the Corporate Debtor does not and in law is not obligated to recognize as holder of NCDs. The Petitioner is only a trustee who has to act on behalf of the debenture holder. If EARC is not the proper debenture holder, the Petitioner has no authority to file the Petition

39. Since the transfers to Edelweiss Finvest Ltd. and EARC are not recognized by law and by the contractual arrangement between the Parties (to which the Petitioner is also a signatory), the Settlement Agreement is valid,

binding and subsisting since it has not been rnevoked by E-cap. There is also nomaterial on record to indicate that EARC has given instructions to the Petitioner to initiate the present proceedings.

40. The Corporate Debtor has further stated that there cannot be stated to be any default on the part of the Corporate Debtor who was ready and willing to abide bythe terms of the Settlement Agreement. In the end, a prayer for dismissal of petition has been made.

FINDINGS:-

41. During the course of the arguments, the counsel for the petitioner has argued that from the facts and circumstances narrated in the petition, it stands established that the Corporate Debtor has committed a default in repayment and further did not adhere to the terms and conditions of the settlement agreement dated 1 October 2020 in as much as after paying the first instalment under the settlement agreement, the Corporate Debtor had failed to pay the remaining instalments. As a result, as per the terms and conditions of the settlement agreement, the Petitioner was well within its rights to demand the total outstanding amount of Rs. 142.19 crores on the basis of the terms agreed to by the Corporate Debtor. According to the Counsel for the Petitioner, a strong case of admission of the petition under Section 7 of the code is made out in this case.

42. On the other hand, the Counsel for the Corporate Debtor has vehemently argued that the Petitioner has no locus standi and the present petition deserves to be outrightly dismissed in this regard. The Counsel for the Corporate Debtor has argued that the Petitioner has failed to prove that the Corporate Debtor has committed a default in complying with the terms and conditions of the Settlement Agreement dated 1 October 2020. According to the Counsel for the Corporate Debtor, as per the terms of the Settlement Agreement, the Corporate Debtor had made the payment of the first instalment of Rs. 34.14 Crores on 18 November 2020. The second instalment was payable on or before 1st October 2021. In the meanwhile,

the original Debenture Holder i.e. E-cap allegedly transferred the debentures to Edelweiss Finvest Ltd on 22nd February 21 and on 18th March 21 the debentures were further transferred by Edelweiss Finvest Ltd (EFL) to Edelweiss Asset Reconstruction Company Limited (EARC). However consequent upon the transfer of the Debentures, as per clause 12.12 of the settlement agreement, the transferees were required to execute Deed of Adherence.

43. In this regard, it has further been pointed out by the counsel for the Corporate Debtor that it received only two letters dated 23.02.2021 and 22.03.2021 from E-Cap and the Petitioner intimating transfer of debentures to EFL and EARC. However, there was no mention of any Deed of Adherence having been executed in respect of the transfer of debentures. According to the Counsel for the Corporate Debtor, this caused serious prejudice to the Corporate Debtor as it was not assured that the transferee of the debentures would abide by and adhere to the settlement agreement. Therefore, the question of paying the second instalment by the Corporate Debtor in terms of the Settlement Agreement as on 01.10.2021 did not arise as no valid Deed of Adherence was executed either by EFL or EARC. Accordingly, the Corporate Debtor cannot be faulted for not paying the second instalment.

44. The Counsel for the Corporate Debtor has further argued that it was only subsequently on 17.12.2021 that the Corporate Debtor received two Deeds of Adherence dated 15 and 16th of December, 2021. The Deed dated 15.12.2021 is stated to be in favour of Edelweiss Finance Company Limited which till date remains an unknown entity to the Corporate Debtor. Secondly, in this deed, debentures are described having face value of Rs.29,81,818 whereas the actual face value of each debenture is Rs. 1 crore. There was further a vague reference in the Deed with regards to the merger of EFL with Edelweiss Finance Company Limited. There was further no reference to any resolution authorizing E-Cap and Edelweiss Finance to execute the Deed of Adherence. The same was the case with regard to the

Deed of Adherence dated 15.12.2021. Not only this, knowing fully well that the Deeds of Adherence dated 15th and 16th December, 2021 were not in order, the Corporate Debtor was provided with another two Deeds of Adherence dated 12 and 13th January, 2022 which were also defective in nature inasmuch as in the Deed dated 12.01.2022, the face value of the debenture were mentioned as Rs. 1,81,818 instead of Rs. 1 crore each and further there was no reference of any board resolution authorizing the execution of the deeds. Under the circumstances, according to the counsel for the Corporate Debtor, the Corporate Debtor cannot be blamed for non-payment of the second instalment under the settlement agreement and since there was a breach on the part of the Petitioner and transferors/transferee of the debentures in not executing a valid Deed of Adherence, the Corporate Debtor cannot be said to have committed any default under the Settlement Agreement.

45. We have thoughtfully considered the aforesaid contentions raised by the counsel for the Corporate Debtor. In this regard, it has been pointed out by the counsel for the Petitioner that the Corporate Debtor is simply trying to obfuscate the issues by raising disputes with regard to their identity of the debenture holders. As a matter of fact, it was the Corporate Debtor who under one pretext or the other did not execute the Deed of Adherence. The Counsel for the Petitioner has further pointed out that even assuming that Edelweiss Finvest Ltd. and EARC failed to execute the Adherence Deed, this by itself did not entitle the Corporate Debtor to commit the default of second instalment. The Petitioner, being a trustee, was a party to the settlement agreement and had the payment been made to the Petitioner, the latter would have issued a valid discharge on behalf of the debenture holders. Therefore, there cannot be any escape from the fact that the default was committed by the Corporate Debtor entitling the Petitioner to invoke the provisions of section 7 of the Code on behalf of the Debenture Holders.

46. From the above facts and circumstances, we are of the considered view that since the Petitioner was a trustee in respect of the debentures issued by the Corporate Debtor which were **freely transferable** as per the terms and conditions of the debenture trustee deed dated 24.12.2014, the execution or non-execution of a valid deed of adherence by the original Debenture Holder or the transferees is not of much significance. It is not the disputed fact that the Corporate Debtor had defaulted in payment of coupon on the debenture's dues on 30.05.2017, following which a notice was issued by the Petitioner in the capacity of the debenture trustee dated 20.06.2017 followed by another notice dated 14.10.2017. It is not further disputed that on 18.04.2018 another notice was issued by the Petitioner to the Corporate Debtor calling upon it to pay the outstanding sum of Rs. 133,10,28,549. Subsequent to this, one-time settlement proposal dated 28.02.2019 was entered into between the parties which was accepted by E-Cap Equities Ltd., the original debenture holder. Subsequently, settlement agreement was executed between the parties on 01.10.2020 followed by a supplemental agreement dated 18.11.2020. As per the terms of the settlement agreement, the Corporate Debtor had agreed to pay a total sum of Rs. 85 crores by way of three instalments of Rs. 35, 20 and 30 crores each. It is further not disputed that the first instalment of Rs. 35 crores was paid by the Corporate Debtor, whereas the second and third instalments were not paid. As a result, the settlement was cancelled, and, in this regard, a notice dated 27.01.2022 was issued cancelling the settlement following which another recall notice dated 10.02.2022 was also issued by the petitioner in the capacity of debenture trustee.

47. The Corporate Debtor has sought to justify the default on the plea that he was not supplied with proper deeds of adherence which were executed by E-Cap Equities Ltd., the original debenture holder in favour of Edelweiss Finvest Capital Ltd., which in turn further transferred the debentures to the EARC Ltd. on 18.03.2021. However, in our considered view, since the present petition is filed by the Trustee of the debentures which is otherwise competent and authorized to file the same in terms of the debenture deed

dated 24.12.2014, the Petition cannot be scuttled on account of some discrepancy or illegality committed by the original debenture holder and the subsequent transferees of the debenture in executing the deed of adherence. Here, it would be worthwhile to mention that the debentures were assigned by the debenture holder i.e. the E-Cap Equities Ltd. to Edelweiss Finvest Equities Ltd. vide assignment agreement dated 18.03.2021 and this fact was brought to the notice of the Petitioner as well as the Corporate Debtor as is evident from the letter (annexure 7) dated 23.02.2021. Thereafter, vide the assignment agreement dated 18.03.2021 Edelweiss Finvest further assigned the debenture to EARC which is at annexure 8 dated 18.03.2021. In this regard also, the notices were also sent to the Corporate Debtor as well as the guarantors as is evident from the record. Therefore, the Corporate Debtor cannot be heard harping that it was not aware as to who exactly was the debenture holder at the time the second instalment was due under the settlement terms.

48. It has also been pointed out that the Deeds of Adherence allegedly executed by the Debenture Holders are not valid as the date of resolution is not mentioned in the Deed of Adherence dated 15.12.2021. It has also been pointed by the Counsel for the Respondent that the Deed is said to have been executed by Edelweiss Finance Company Limited which was not the holder of the Debentures at any point of time. Moreover, the Deed of Adherence is not in accordance with the format. It has also been contended that all the four Deeds of Adherence are defective and cannot be relied upon. In the circumstance, according to the Counsel for the Respondent, since the Assignment was not proper, the Corporate Debtor cannot be held to be at fault for non-payment of the second instalment in terms of the settlement terms and, therefore, the original debt could not have been invoked.

49. We have given thoughtful consideration to the aforementioned points raised by the Counsel for the Respondent. It is no doubt that the Deed of Adherence dated 15.12.2021 was executed in which Edelweiss Finance Company Limited is shown to be a Transferee. Similarly, in the Deed of

Adherence dated 13.01.2022 Edelweiss Finance Company Limited is shown to be the Debenture Holder/Transferor/Assignor and by way of this Deed, the Debentures are said to have been transferred to Edelweiss Asset Reconstruction Company Limited. In this regard, it has been pointed out that Edelweiss Finance Company Limited is an entity unknown to the Respondent. There is no doubt about the fact that there is some confusion with regard to the entity as to whether the Edelweiss Finance Company Limited is a different company than that of Edelweiss Finvest Limited. However, the entire controversy with regard to the entity called Edelweiss Finance Company Limited can be said to rest considering the fact that Edelweiss Finance Company Limited is not a different company and as a matter of fact, it had merged into Edelweiss Finvest Company Limited as is evident from the order dated 22.02.2021 passed by NCLT Mumbai, Court No. 1, a copy of which has been placed on record. As per this order, the two Companies are stated to have been merged and the ensuing Company is Edelweiss Finvest Company Limited. Therefore, it cannot be successfully argued that Edelweiss Finance Company Limited had nothing to do with the Debentures.

50. So far as the execution of the Deeds of Adherence is concerned, in our considered view, any discrepancy or infirmity in the execution of the Deeds of Adherence cannot lead to a conclusion that there was no default on the part of the Corporate Debtor. It is admitted case as per the Debenture Trust Deed, the Debentures were freely transferable and as stated above in the foregoing part of this order, the Debenture Trustee was competent to act on behalf of the holders. Therefore, the Corporate Debtor cannot be allowed to hide behind the plea that since proper Deeds of Adherence were not executed, he was not able to pay the second instalment as it could always pay to the same to the Trustee, i.e. the Petitioner.

51. As regards the contention of the Corporate Debtor on this point that the Petitioner as debenture trustee cannot act for EARC, who itself is a trustee and, therefore, the Petition is hit by Section 8 of the Indian Trust Act is concerned, it is worth pointing out that Section 7 (2A) (b) of the SARFAESI

Act clearly precludes the applicability of the Indian Trusts Act, 1-882 in so far they are inconsistent with the provisions of the SARFAESI Act. Further Section 7 (2A) (a) of the SARFAESI Act permits an asset reconstruction company to act in trust for the benefit of qualified buyers. Relevant Section is extracted below:

[(2A) (a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the 1[asset reconstruction company), and the I[asset reconstruction company) shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the [qualified buyers] holding the security receipts or from whom the funds are raised.

(b) The provisions of the Indian Trusts Act, 1882 (2 of 1882) shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.

Therefore, this argument is also not sustainable.

52. As a result of the foregoing discussion we are of the considered view that the Petitioner has been able to establish the existence of debt and default on the part of the Corporate Debtor as the latter committed default in repayment of the instalments in terms of the settlement agreement making the Petitioner entitled to invoke the default in terms of the original Debenture Trust Deed.

53. Considering the above facts, we come to conclusion that 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 met in this case. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.

54. Accordingly, the Company Petition is admitted in view of the following terms:

ORDER

- a) The above Company Petition No. (IB) 664/IB/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **SKIL Shipyard Holdings Private Limited.**
- b) The Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition. This Bench hereby appoints **Mr. Abhijit S Gokhale**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00964/2020-2021/13092, having Email id abhijitgokhale07@gmail.com as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- d) That this Bench hereby prohibits 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 supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f) 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.
- g) 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.
- 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 suspended directors and 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, the **C.P. 664/IB/MB/2022** is **admitted**.
- l) The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)