

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI BENCH, COURT I**

**C.P.(IB)-895(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) Rules, 2016)

*IN THE MATTER OF,*

**“Edelweiss Asset Reconstruction Company Limited**

(acting in its capacity as Trustee of the EARC Trust-SC 462) (“**EARC**”) as successor to..”

(CIN: U67100MH2007PLC174759)

Registered Office at: Edelweiss House, Off C.S.T. Road, Kalina, Mumbai-400098.

**.....Financial Creditor/Petitioner**

**Vs.**

**ND’s Art World Private Limited**

(CIN: U74999MH2002PTC138153)

Address of the Corporate Debtor: SNO 14-3, 15-3, 17-2, at Village Hatnoli Taluka Khalapur, Raigad, Maharashtra-410207.

**.....Corporate Debtor/Respondent**

**Order Reserved On : 22.06.2023**

**Order Pronounced On : 25.07.2023**

***Coram:***

Hon’ble H.V. Subba Rao, Member (Judicial)

Hon’ble Anu Jagmohan Singh, Member (Technical)

***Appearance:***

For the Petitioner : Mr. Mustafa Doctor, Senior Advocate

For the Respondent : Mr. Amir Arsiwala, Advocate

**ORDER**

***Per: H. V. Subba Rao, Member (Judicial)***

1. The above Company Petition was originally filed by “CFM Asset Reconstruction Private Limited” (acting in its capacity as Trustee of the CFMARC Trust-66) as Financial Creditor under Section 7 of the Code against the Corporate Debtor “ND’s Art World Private Limited” for initiating Corporate Insolvency Resolution Process against the Corporate Debtor for unresolved financial debt of Rs. 203,69,91,750/- under the First Loan Agreement and Rs. 48,78,79,562/- under the Second Loan Agreement. Thus, totalling an amount of Rs. 252,48,71,926/- (Rupees Two Hundred Fifty-Two Crores Forty-Eight Lakhs Seventy-One Thousand Nine Hundred and Twenty-Six Only).
2. During the pendency of the captioned Company Petition, the debt was assigned to M/s. **Edelweiss Asset Reconstruction Company Limited** (acting in its capacity as Trustee of the EARC Trust-SC 462) under a Deed of Assignment Agreement dated 31.12.2020 who subsequently substituted as Assignee in the name of Original Financial Creditor and is continuing the present Company Petition.
3. The brief facts behind filing the above Company Petition as pleaded in the petition are as follows:
  - i. The Corporate Debtor viz. ND's Art World Private Limited ("NDAWPL"/ "Corporate Debtor") is a company incorporated on 5 December 2002 engaged inter alia in the business of organizing,

maintaining, operating replicas of historical monuments and providing facilities and services related to hotels, theme restaurants, shopping malls and recreation centres.

- ii. In or around 2016, the Corporate Debtor approached ECL Finance Limited ("ECLFL") for a loan of a sum to the maximum extent of INR 150,00,00,000/- (Rupees One Hundred Fifty Crores).
- iii. Based on the representations made and request received from the Corporate Debtor, on 2 November 2016, a Loan Agreement was executed between ECLFL and Corporate Debtor ("First Loan Agreement") whereby ECLFL agreed to grant a loan of INR 150,00,00,000/- (Rupees One Hundred Fifty Crores). Pursuant to the First Loan Agreement, disbursements were made and the Corporate Debtor availed a loan of INR 150,00,00,000/- (Rupees One Hundred Fifty Crores).
- iv. Along with the First Loan Agreement, various security documents securing the loan were also executed by the Corporate Debtor, Nitin Chandrakant Desai and Naina Nitin Desai and KND Investments and Finance Private Limited.
- v. Subsequently, in or around the year 2018, the Corporate Debtor once again approached ECLFL for a loan of a sum to the maximum extent of INR 35,00,00,000/- (Rupees Thirty-Five Crores Only).
- vi. Accordingly, a Loan Agreement dated 23 February 2018 ("Second Loan Agreement") was executed by and between the Corporate Debtor and ECLFL whereby ECLFL, on the Corporate Debtor's request, agreed to advance a loan of a sum to the maximum extent of INR 35,00,00,000/- (Rupees Thirty-Five Crores Only). Out of the sanctioned amount of INR 35,00,00,000/- (Rupees Thirty-Five Crores Only), the Corporate Debtor availed INR 31,00,00,000/- (Rupees Thirty-One Crores Only).

- vii. Along with the Second Loan Agreement, various security documents securing the loan were also executed by the Corporate Debtor, Nitin Chandrakant Desai and Naina Nitin Desai and KND Investments and Finance Private Limited.
- viii. As such, the total amount of debt granted under both the facilities is therefore INR 181,00,00,000/- (Rupees One Hundred and Eighty-One Crores Only).
- ix. On account of irregular and delayed payments of the principal instalments and interest by the Corporate Debtor under the First and the Second Loan Agreement, the loan account of the Corporate Debtor was first classified as SMA-2 on 30 March 2020 in the books of ECLFL in accordance with the Guidelines and Directions issued by the Reserve Bank of India ("RBI") from time to time.
- x. In terms of section 5 (1) (b) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), Article 9.13 of the First Loan Agreement and clause 18 of the Second Loan Agreement, an Assignment Agreement dated 31 December 2020 was executed by and between ECLFL and the CARPL (acting in its capacity as Trustee of the CFMARC Trust-66) whereby ECLFL transferred/assigned all its rights, title and interest under the Loan Agreements, the Transaction Documents and the underlying securities in favour of the Financial Creditor. Pursuant to the assignment, CARPL has stepped into the shoes of ECLFL as the lender under the Loan Agreements/Transaction documents and has become entitled to recover all the dues and enforce all rights, powers and benefits under the Loan Agreements/Transaction Documents including enforcement of security and guarantee. As

such, CARPL falls within the definition of "Financial Creditor" under section 5 (7) of the Insolvency and Bankruptcy Code, 2016 ("the Code").

- xi. CARPL vide its Notice of Assignment dated 6 January 2021 informed the Corporate Debtor that CARPL has now stepped into the shoes of ECLFL as the lender under the Transaction Documents by way of the Assignment Agreement. The CARPL further informed the Corporate Debtor ought to address all communications related to the Loan Agreements/Transaction Documents to the Financial Creditor.
- xii. The Corporate Debtor thereafter continued making default of payments under the First and the Second Loan Agreements. The default was on the following occasions:

<b>Date</b>	<b>Nature of default</b>	<b>Amount (INR)</b>
31 January 2020 (First Loan Agreement)	Failure to pay interest	1,75,17,077
31 January 2020 (Second Loan Agreement)	Failure to pay interest	2,42,22,496
31 March 2021	Account declared as NPA	Entire outstanding amount
31 March 2022	Maturity date for payment of principle under the Second Loan Agreement	33,24,53,992
9 May 2022	Maturity date for repayment of entire	147,37,66,747

	principle amount of First Loan	
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xiii. Pursuant thereto, the CARPL through its Advocates, addressed a loan recall notice dated 18 May 2022 to the Corporate Debtor and the Guarantors under the transaction documents stating that various defaults have been committed by the Corporate Debtor in payment of principal instalments as well as interest payments under the Loan Agreements within 5 days of the date of notice. It was further stated that in light of the defaults by the Corporate Debtor, the amount outstanding as on 15 May 2022 i.e., INR 200,00,71,004/- (Rupees Two Hundred Crores Seventy One Thousand and Four Only) under the First Loan Agreement and INR 47,77, 17,042/- (Rupees Forty Seven Crores Seventy Seven Lakhs Seventeen Thousand and Forty Two Rupees Only) under the Second Loan Agreement has become due and payable immediately and called upon the Corporate Debtor to pay the said amount. However, no payment has been received from the Corporate Debtor despite this loan recall notice and as such, the Corporate Debtor has defaulted in making payment under the Loan Agreements on 23 May 2022.

xiv. As such, as on 30 June 2022, the total default amount is INR 252,48,71,926/- (Rupees Two Hundred Fifty-Two Crores Forty-Eight Lakhs Seventy-One Thousand Nine Hundred and Twenty-Six Only).

4. The Corporate Debtor filed affidavit in reply of Ms. Pradnya Surve, (Officer) authorized representative of Corporate Debtor opposing the above Company

Petition on the following grounds. The important and relevant paras of the reply are reproduced hereunder for ready reference:

**LOCUS-ASSIGNMENT INVALID**

4. I say that the loan was advance by ECL Finance Limited to the Financial Creditor and there is no privity of contract and the Financial Creditors and corporate debtor. The Financial Creditors have claimed that the concerned debt has been assigned to them in December 2020 by the ECL Finance Limited, however this I say that the said assignment is invalid and illegal and hence the Financial Creditors herein have not acquired any rights to maintain the present application to recover the alleged outstanding dues from the Corporate Debtor.
6. It is submitted that the Financial Creditors can get the assignment of any account/ asset from the financial company only after the same becomes an NPA in the hands of the said finance company. That a subsisting loan, which is live and active, cannot be assigned to the Financial Creditor company by the such financial institution. It is submitted that in the present case the alleged assignment is dated 28th December 2020, although the account of the borrowers is alleged to have been classified as NPA on 31st March 2021, in the books of the lender ECL Finance Limited. That since the date of alleged assignment is prior to the date of the account being allegedly classified as NPA, the assignment itself is bad-in-law and in view thereof the entire cause of action, as alleged falls.

**“Section 10 – Stay of suit.**

9. That the Financial Creditor has filed an original application before the DRT, Delhi on the basis of a notice issued dated 7th May 2022. It is submitted that even otherwise this Corporate Debtor has also filed a Securitization Application No. 3339/22 (Section 17) before the DRT, Mumbai for challenging which is the basis of filling the present Financial Creditor by the Financial Creditor.
10. That since the SA filed by this Corporate Debtor and Original Application is also filed by the Financial Creditor, the Financial Creditor cannot be permitted to do forum shopping and the present Financial Creditor be dismissed with cost.
- 11.(ix). The Corporate Debtor submit that the Corporate Debtor were simultaneously in search of options to clear the loan with the Financial Creditor. The Corporate Debtor were simultaneously in touch of the officials of ECL Finance Limited for working out the OTS/ restructuring proposal and the Corporate Debtor craves leave to refer to and rely on such correspondence as and when produced
- (x). The Corporate Debtor submit that suddenly on 6th January 2021 the Corporate Debtor received a letter dated 6th January 2021 issued by Financial Creditor, where it was mentioned that the subject loan is assigned by ECL Finance Ltd. to Financial Creditor (as trustees of CFMARC Trust-66). At the sake of repetition, the Corporate Debtor state that, the said letter merely mentioned that the Corporate Debtor' loan stands assigned to the Corporate Debtor, however no document evidencing such assignment was either mentioned nor enclosed therein. That neither was any letter received by the Corporate Debtor from the ECL Finance Ltd. intimating such

assignment leave alone the consent been taken of the Corporate Debtor.

- (xi). The Corporate Debtor submit that the Corporate Debtor continued to work out on OTS or restructuring proposal in view of what is stated in herein above.
- (xii). The Corporate Debtor submits that on 7th May 2021, the Corporate Debtor suffered another set-back, when the Studio of the Corporate Debtor at 14-3, 15- 3, 17-2, ND Studio, Village Hatnoli, Chowk Phata, Karjat road, Khalapur, Raigad, Maharashtra 410206, caught fire, which lead to the entire studio including the Corporate Debtor's furniture, fixtures, machinery being damaged and destroyed.
- (xiii). That instead to showing any support to the Corporate Debtor, the Financial Creditor caused a notice issued to the Corporate Debtor on the very same day. That, the said notice was allegedly issued u/s.13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). Hereto annexed and marked Exhibit "D" is a copy of notice u/s 13(2) dated 7th May 2021.
- (xiv). The Corporate Debtor submit that on receipt of said notice, the Corporate Debtor, being under bonafide belief of the Financial Creditor being alleys, replied to the said notice vide letter dated 12 May 2021, and refuted the contents raised by the Financial Creditor in their notice dated 7th May 2021. Hereto annexed and marked as Exhibit "E" is the copy of the letter dated 12th May 2021. The Corporate Debtor in its said letter pointed out about a fire broke out in the Corporate Debtor's studio which has led to huge financial loss and set back and also referred to

the RBI guideline as per which, new NPA classification norms were issued by RBI.

(xv). The Corporate Debtor submit that the Financial Creditor thereafter issued a response to the above letter, vide its letter dated 26th May 2021, wherein the Financial Creditor rather than showing sympathy towards the loss, exhibited a complete insensitive approach towards the said fire incident by simply expressing its intent to lay a claim on the proceeds of insurance settlement amount. Hereto annexed and marked as Exhibit "F" is the copy of the letter dated 26th May 2021.

(xvi). The Corporate Debtor submit that even thereafter the Corporate Debtor have been negotiating and corresponding with the Financial Creditor for effectively working out a restructuring or OTS proposal, however the 2nd and 3rd Covid-wave continued to act as impediment for the Corporate Debtor. The Corporate Debtor craves leave to refer to and rely on various correspondence ensued between the parties to substantiate the same.

### **Findings**

5. Heard the submissions of Mr. Mustafa Doctor, Senior Advocate appearing for the Financial Creditor and Mr. Amir Arsiwala, Advocate appearing for the Corporate Debtor.
6. The only contention raised by Mr. Amir Arsiwala during the final hearing is that the date of default falls within the 10A period and therefore the above Company Petition is liable to be rejected on that score. It is shocking and surprising to note that the said plea was never raised by Corporate Debtor

anywhere in the affidavit in reply filed by them and the above argument of the Corporate Debtor on that score is quite misleading and is totally without pleadings and therefore is liable to be rejected.

7. Now coming to the affidavit in reply filed by the Corporate Debtor. The Corporate Debtor devoted so much space in the affidavit in reply complaining against the conduct of the Financial Creditor in initiating various proceedings before DRT and measures under the SARFAESI Act etc. which is the legitimate legal right of the Financial Creditor. The Corporate Debtor in number of paras in their affidavit in reply clearly admitted the existence of “debt” and “default” committed by them and also admitted that they have submitted OTS proposal on 18.07.2022 which was rejected by the Financial Creditor. The careful perusal of the affidavit in reply filed by the Corporate Debtor makes it abundantly clear that the Corporate Debtor is neither disputing the “debt” nor the “default” through their own reply. The Corporate Debtor did not raise any valid legal defence for rejection of the above Company Petition.
8. The Financial Creditor has successfully proved the existence of “debt” and “default” through the record of default issued by the NESL apart from other security documents and loan documents. The date of default is mentioned as 31.01.2020 in the NESL Certificate in the record of default and the above Company Petition being filed on 26.07.2022 is well within limitation. Certainly the above date of default does not fall within 10A period and the argument of Corporate Debtor with regard to the default during 10A period needs to be

rejected on merits. The Financial Creditor has also suggested the name of Mr. Jitender Kothari as proposed IRP to be appointed in this matter and thus the above Company Petition satisfies all the legal requirements for admission and this Bench did not find any valid reason to dismiss the same.

9. Accordingly, this Bench hereby admit the above Company Petition by passing the following order:

**ORDER**

- a. The above Company Petition No. (IB) 895 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **ND's Art World Private Limited.**
- b. This Bench hereby appoints Mr. Jitender Kothari ([irp.jitenderkothari@gmail.com](mailto:irp.jitenderkothari@gmail.com) or [jitenderkothari@rediffmail.com](mailto:jitenderkothari@rediffmail.com)) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00540/2017-18/10965 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, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**

Shubham