

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IBA/653/2020

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **G K Industrial Park Private Limited**

Edelweiss Asset Reconstruction Company Ltd.,

Registered Office at,
Edelweiss House,
15th Floor, Off C.S.T. Road, Kalina,
Mumbai – 400 098.

... Applicant

-Vs-

G K Industrial Park Private Limited,

30, Chennai Bypass Road,
Mannarpuram,
Trichy – 620 020.

... Respondent

Order Pronounced on 13th January 2022

CORAM:

Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : Ms.Indhumathi Ravi, Advocate

For Corporate Debtor : Mr.T.Jayashankar, Advocate

ORDER

Per: Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

Under Adjudication is an Application that has been filed by

Edelweiss Asset Reconstruction Company Pvt. Ltd.

(hereinafter referred to as 'Financial Creditor') under Section 7 of

the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **G K Industrial Park Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is a Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN: U45200TN2007PTC065754 which was incorporated on 17.12.2007 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at 30, Chennai Bypass Road, Mannarpuram, Trichy – 620 020. As per Part III of the application, the Financial Creditor has proposed the name of one Mr.Krishnasamy Vasudevan, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that as of 31.08.2018 the amount below is being claimed by the Financial Creditor as the Financial Debt.

Facility	Principal O/S	Total O/S
Term Loan	Rs.21,36,04,201/-	Rs.33,10,79,439/-
Total	Rs.21,36,04,201/-	Rs.33,10,79,439/-

Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt', which are as follows;

- i. Sanction letter issued by PNB in favour of Corporate Debtor.
- ii. Undertaking executed by Corporate Debtor in favour of PNB.
- iii. Term Loan agreements executed by and between Corporate Debtor and PNB.
- iv. Mortgage Deeds Executed by Corporate Debtor in favour of PNB.
- v. Agreement of Guarantee executed by Corporate Debtor in favour of PNB.
- vi. Letter Regarding Restructuring of Term Loan Account issued by PNB in favour of the Corporate Debtor.
- vii. Letter Regarding subsequent clarifications to restructuring proposal issued by PNB in favour of the Corporate Debtor.
- viii. Supplementary Agreements for re-schedule of Term Loan executed between PNB and the Corporate Debtor.
- ix. Assignment agreement executed between PNB and EARC.
- x. Letter regarding restructuring proposal for the Corporate Debtor issued by EARC
- xi. Copy of Default Notice under Restructuring Agreement issued by EARC / Applicant.
- xii. Settlement of accounts of PNB with Certificate under Bankers Book of Evidence Act.
- xiii. Statements of accounts of Applicant
- xiv. Creation of Charge with the ROC.



4. The Learned Counsel for the Financial Creditor submitted that in the course of its business, the Corporate Debtor had obtained several loan facilities from various banks and financial institutions, including Punjab National Bank (hereinafter referred to as Assignor Bank).

5. It was further submitted that the Assignor Bank had agreed to advance Rs.77 crore by way of Term Loan to the Corporate Debtor on the terms and conditions mentioned in a Term Loan Agreement. Accordingly, the Corporate Debtor executed the Term Loan Agreement on 23.09.2009.

6. It was further submitted that the Corporate Debtor had agreed to repay the entire principal amount after a moratorium of 24 months or on 30.06.2011, whichever is later and thereafter, to be repaid in 16 equal quarterly instalments of Rs.4,81,25,000/- per quarter at the end of each quarter commencing from 30.06.2015. Further, the Corporate Debtor agreed to pay interest at the rate of 12% per annum with monthly rests for the first 3 years and thereafter, the interest was to be reset at the end of every year from the first reset date. Further, the Corporate Debtor agreed to pay penal interest at the rate of 2% per annum over and above the nominal interest rate on the entire outstanding, for any default in the payment of the Principal or interest for such period as the default continues.



7. It was further submitted that the Corporate Debtor has executed a Deed of Simple Mortgage in favour of the Assignor Bank by deposit of title deed on 24.09.2009. The Corporate Debtor had created an equitable mortgage in favour of the Assignor Bank and for securing the sanction of Rs.77 crore, had deposited the original title documents in the name of the Corporate Debtor by way of Simple Mortgage on 08.12.2009, wherein the Corporate Debtor had agreed that its charge over the mortgaged properties will be released in phases at the time of registration of the individual plots/BTS by way of issuing No Objection Certificate and that the entire proceeds will be deposited in an Escrow Account of the Assignor Bank. The Corporate Debtor had executed Mortgages by deposit of title deeds in favour of Assignor Bank on 29.03.2010, 28.07.2011 and 16.03.2012.

8. It was further submitted that the Corporate Debtor started failing to comply with the terms of the credit facilities and default in the repayment of amounts sanctioned and payment of interest, cost, charges etc. to the Assignor Bank.

9. It was further submitted that the Corporate Debtor approached the Assignor Bank seeking a restructuring of the loan facilities. The Assignor Bank on 31.03.2015 approved the restructuring of the term loan with an outstanding of Rs.36.87 Crores

as on the cut-off date 01.01.2014. The Corporate Debtor agreed to create a first charge on the Corporate Debtor's rights under the project documents including contracts and all licenses, permits etc., in respect of the project.

10. It was further submitted that the Corporate Debtor executed a Supplementary Agreement on 31.03.2015 to honour the terms and conditions under the loan restructuring and agreed that in case of default, the Assignor Bank can proceed to take possession of the secured property. The Managing Director / Promoter of the Corporate Debtor Mr. K.G. Muraleedharan executed an Agreement of Guarantee on 31.03.2015 as agreed under the re-structuring of the Term Loan guaranteeing to repay the loan facility availed by the Corporate Debtor, whereby the Corporate Debtor unconditionally guaranteed, jointly and severally, to pay on demand all sums of money due under the said facility. The said guarantee is still subsisting and is in force. Since the Corporate Debtor was unable to honour the payments as per the restructuring of the credit facilities, the Assignor Bank cancelled the restructuring agreement.

11. It was further submitted that the Assignor Bank assigned the credit facilities availed by the Corporate Debtor to the Applicant vide Assignment Agreement dated 30.12.2016.



12. Pursuant to the said Agreement, the Corporate Debtor approached the Applicant to consider restructuring of the loan facility of the Company. In turn, the Applicant restructured the loan on 03.01.2017. The Corporate Debtor agreed that a sum of Rs.26.70 Crore was due and payable by the Corporate Debtor as on 29.12.2016 and agreed to repay the same. Under the said restructuring facility, the Corporate Debtor agreed that it shall repay the amount with interest by 31.03.2022 and the said repayment shall be as per the Amortisation Schedule contained in the restructuring proposal dated 03.01.2017. It was also agreed that in the event of default, the Applicant shall have a right to revoke the restructuring package on exercising which the original liability of the Company shall be restored along with the future interest and costs after deducting the amount paid by the Corporate Debtor.

13. It was further submitted that the Corporate Debtor repaid the 1st instalment of Rs.3.Crore on 31.03.2018, but the Corporate Debtor subsequently failed to repay the principal instalments of Rs.4 Crores each for September 2018 and March 2019 along with interest. Hence, the total overdue under the restructuring proposal dated 03.01.2017 as on 31.03.2019 aggregated to Rs.11,32,28,279/-. Under such circumstances, the Applicant issued



a Default Notice to the Corporate Debtor on 08.04.2019 and to Mr.K.G.Muraleedharan the guarantor, to immediately repay the due within 30 days. Despite receiving the notice, the Corporate Debtor and Mr.K.G.Muraleedharan failed to make a payment. Hence, the Financial Creditor filed this application to initiate CIRP against the Corporate Debtor.

14. Heard the submissions made by the Learned Counsels for the parties and perused the records. It is seen from the Term Loan Agreement dated 23.09.2009, that the Corporate Debtor had borrowed Rs.77 crore from the Assignor bank with interest and the Corporate Debtor had executed Mortgage deeds dated 24.09.2009, 08.12.2009, 29.03.2010, 28.07.2011 and 16.03.2012 in favour of the Assignor Bank as a security to the said loan. On perusing the Record of Default issued by NDSL dated 20.10.2020 we see that the Corporate Debtor had defaulted from 31.03.2014.

15. Further, it is seen from the Assignment Agreement dated 30.12.2016, that the Assignor Bank, assigned the Applicant all its rights, title and interest in the financial documents in respect of the loan advanced to the Corporate Debtor. Pursuant to the above agreement the Applicant sent Loan Restructuring proposal to the Corporate Debtor vide letter dated 03.01.2017. It is to be noted that the said Restructuring proposal was accepted, signed by the



Director of the Corporate Debtor and the common seal of the Company is also affixed thereto.

16. In furtherance to that on 23.11.2021, the Learned Counsel appeared for the Respondent expressed no objection to the present application and had admitted the debt and default.

17. Thus, the above records prove that the Corporate Debtor admitted its liability and also defaulted in repayment of the agreed amount which is due and payable to the Financial Creditor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

18. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

19. Further, it is seen that the validity of AFA of the Resolution Professional proposed by the Financial Creditor was expired. Therefore, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January 2022 – June 2022 appoints **Mr.Madhu Desikan**, having Registration Number **[IBBI/IPA-001/IP-P00579/2017-2018/11021]** (**e-mail ID: *desikan.madhu@gmail.com***) as



Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

20. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c. 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;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

21. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:



(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

22. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

23. Based on the above terms, the Petition stands **Admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

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