

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

COMPANY PETITION (IB) No. 776/MB-IV/2023

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016.

In the matter of

Edelweiss Asset Reconstruction Company Ltd.

[CIN: U67100MH2007PLC174759]

...Financial Creditor

v/s.

Richa India Infra Development Private Limited

[CIN: U45400MH2010PTC211530]

...Corporate Debtor

Order Delivered on: **06.12.2023**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

CP (IB) No. 776/MB-IV/2023

For the Financial Creditor:

Ms. Mitali Bhatt a/w Adv. Priyank
Jadhav, Mr. Ayush Rajani i/b AKR
Legal, Ld. Counsel.

For the Corporate Debtor:

Ms. Vidya Niar a/w S. Shetty, Ms.
Meenkashi Pahuja i/b PNB Legal,
Ld. Counsel.

ORDER

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by **Edelweiss Asset Reconstruction Company Limited** (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **Richa India Infra Development Private Limited**, the Corporate Debtor.

1.1 The present petition is filed on 22.08.2023 and the total default as on 09.05.2023 amounts to INR 1,25,96,01,242/- (Rupees One Hundred Twenty-Five crore, Ninety-Six lakhs, One thousand, Two hundred and Forty-Two only), which is broken down into Principal outstanding of INR 50,00,00,000/-, Interest amount of INR 49,97,46,771/-, and Other charges of INR 25,98,54,471/-. The Date of Default as specified in Part-IV of the present petition is 09.05.2023.

Submissions of the Financial Creditor

2. The Financial Creditor submits that the Corporate Debtor was sanctioned a Loan to the extent of INR 80,00,00,000/- (Rupees Eighty-crores only) by the Principal Lender *viz.* ECL Finance Limited (“**ECLFL**”) *vide* Sanction Letter *dated* 20.11.2016, pursuant to terms and conditions of a Term Loan Agreement *dated* 01.12.2016. The said Loan was granted for development, construction and completion of the building in the project named “Park Marina” (“**said project**”). The corresponding tranche of disbursements are as follows:

S. No.	Date of Disbursal	Amount of Disbursal (INR)
01	29.12.2016	60,00,00,000
02	17.05.2017	5,00,00,000
03	03.10.2017	2,85,00,000

04	04.01.2018	2,15,00,000
05	13.07.2018	5,25,00,000
06	26.09.2018	4,75,00,000
	Total	80,00,00,000

This term loan facility (including all rights, title, interest and security interest in relation to facility available to Corporate Debtor) were assigned to the Applicant *viz.* Financial Creditor, on account of default by the Corporate Debtor, *vide* an Assignment Agreement *dated* 30.09.2019 (“**Assignment Agreement**”) executed between the Assignor (ECLFL) and the Financial Creditor herein, acting in its capacity as Trustee of EARC Trust SC 392.

3. In accordance with the Term Loan Agreement *dated* 01.12.2016, the requisite security documents were executed to secure the repayment of the Loan. The list of securities for the afore-mentioned Term-Loan Facility are as follows:

- a.* Indenture of Mortgage *dated* 17.12.2016 executed by the Borrower/ Mortgagor *viz.* Corporate Debtor creating a mortgage over *inter-alia* the property where a residential project (said project) was to be developed and all receivables flowing therefrom in the following manner to secure the repayment of the loan facility.
- b.* All the rights, title, interest, benefits and entitlements (both present and future) of the Mortgagor in the said project being constructed over all that part, pieces and parcel of lands admeasuring in aggregate 2183 Sq. Mts. Bearing F.P. No. 179, 180, 189, 189(1), 189(2), 189(4), 190 and 191 of TPS IV Mahim division situated at Gokhale Road and Sena Bhavan Path, Dadar (W), Mumbai-400028, in the registration sub-district of Mumbai including all rights, title, interest, benefits and entitlements accruing thereon save and except (i) free sale area admeasuring 12690 Sq.

Ft. saleable area as specified in Part A (as more specifically set out in the Indenture of Mortgage) (ii) the sold units as specified in the Project Land, as more particularly set out in the Indenture of the Mortgage.

- c.* The whole movable properties of the Mortgagor relating to the Project including without limitations its movable machinery, equipment, machinery spares, book debts, tools and accessories and other movables both present and future, as more particularly set out in Indenture of Mortgage.
- d.* All the right, title, interest, benefits, claims and demands whatsoever of the Mortgagor (a) pertaining to the Project (b) in the documents relating to the Project (c) all rights, title, interest, benefits, claims and demands whatsoever of the Mortgagor in the approvals/ permissions relating to the Project, both present and future (d) all the right, title, interest, benefits, claims and demands whatsoever of the Mortgagor in any letter of credit, guarantee, performance bond provided by any party to the Projects, documents, both present and future of all the rights, interest, title, benefits, claims and demands whatsoever of the Mortgagor in respect of the Insurance Policies both present and future and all rights, claims, receivables etc. as more particularly set out in Indenture of Mortgage.
- e.* All the receivables and all right, title, interest, benefits, claims and demands whatsoever of the Mortgagor in, to and in respect of all the present and future receivables, commissions, revenues, claims and chooses in-action of whatsoever nature as more particularly set out in Indenture of Mortgage, including:

 - No lien specific purpose bank account in the name and style of '*Richa India Infra Pvt. Ltd.*' opened by Mortgagor with HDFC Bank.

- No lien specific purpose bank account in the name and style of '*Richa Park Infra Marina Project Pvt. Ltd.*' opened by Mortgagor with HDFC Bank.
- f.* Agreement for Pledge of shares executed by Prakash Joshi, Anil Thote, Savita Thote, Swati Joshi and Ashutosh Thote *dated* 01.12.2016 wherein the Pledgors cumulatively pledged 2,50,000 shares of Corporate Debtor in favour of Assignor.
- g.* Agreement for Pledge of Shares executed by Prakash Joshi and Anil Thote *dated* 03.05.2017 wherein the Pledgors pledged 9000 and 1000 shares of Corporate Debtor each respectively in favour of Assignor.
- h.* Agreement for Pledge of Shares *dated* 03.05.2017 executed by Richa Park Marina Project Pvt. Ltd. Wherein the Pledgor pledged 5,00,000 shares of the Corporate Debtor in favour of the Assignor.
- i.* Deed of Guarantee Agreement executed by Prakash Joshi and Anil Thote in favour of Assignor on 01.12.2016 guaranteeing repayment of the loan extended to the Corporate Debtor.
4. The Financial Creditor submits that owing to Corporate Debtor's continuous defaults in payment of instalments and interest, and subsequent to the Corporate Debtor being classified as a non-performing asset (NPA) in the books of the Principal Lender as on 30.08.2019; The Financial Creditor issued a Recall Notice-cum-Invocation of Guarantee to the latter *dated* 08.01.2020 seeking forthwith repayment of the entire loan amount along with interest overdue. Pursuant to the same, the Financial Creditor filed a petition bearing C.P. (IB) No. 92 of 2021 u/s. 7 of the IBC, 2016, *dated* 01.12.2016 against the Corporate Debtor to initiate CIRP before this Tribunal.

5. Subsequent to a No-objection Certificate *dated* 11.07.2022 issued by the Financial Creditor; A Development Management Agreement *dated* 12.07.2022 was entered between the Corporate Debtor and one M/s. Sugee Developers Private Limited (“**Development Management Consultant**”) for redeveloping the Corporate Debtor’s said property *i.e.* piece and parcel of land bearing F.P. No. 179, 180, 189, 189(1), 189(2), 189(4), 190 and 191 admeasuring 2183 sq. mts. of TPS IV, Mahim division situated at Gokhale Road North, Dadar (W), Mumbai-400028 along with the buildings known as “Katharada Mansion”, “Mohamadi Manzil”, “Laher Mansion”, “Karoliya Trust”, “Ahmed Building”, “Samadhan Building”, “Sara Mansion” and “Balkrishna Sadan”. Furthermore, during the pendency of the said Petition, the Financial Creditor submits that it was approached by the Corporate Debtor for amicable resolution of the project being developed by the Corporate Debtor and upon discussion, both the parties agreed to the terms which were recorded in the Framework Agreement *dated* 24.08.2022.
6. The Financial Creditor submits that in view of the aforesaid Framework Agreement, it filed an application bearing I.A. No. 2486 of 2022 under Section 12A of IBC, 2016 for withdrawal of the original C.P. (IB) No. 92 of 2021. The said I.A. No. 2486 of 2022 was allowed by this Bench *vide* Order dated 10.08.2022 and resultantly the C.P. (IB) No. 92 of 2021 was disposed of as withdrawn.
7. The Financial Creditor submits that the Corporate Debtor’s failure to comply with the terms of the Framework Agreement *dated* 24.08.2022 constitutes a breach of the entire terms agreed between the parties therein. It further contends that upon occurrence of event of default, the Corporate Debtor is strictly liable to the dues of the Financial Creditor pending as on the date of default specified herein. Hence, the present application.

Submissions of the Corporate Debtor

8. The Corporate Debtor submits that there is neither any non-payment of debt by it nor has any instalment of the amount of debt become due and payable to the Financial Creditor, under the Framework Agreement *dated* 24.08.2022 and that; The alleged breach of the Framework Agreement relied upon by the Financial Creditor is founded on an “*..entirely hypothetical contractual breach*” as the fulfilment of the Corporate Debtor’s liability was contingent upon the successful execution of the said project.

9. The Corporate Debtor submits that the Date of Default relied upon by the Financial Creditor *i.e.* 09.05.2023, is the date on which the Corporate Debtor terminated the Development Management Agreement *dated* 12.07.2022 with M/s. Sugee Developers Private Limited (“**Development Management Consultant**”) due to default on part of the latter. The Corporate Debtor further submits that, neither the said Development Management Consultant is a party to the Framework Agreement *dated* 24.08.2022 nor is the Financial Creditor a party to the Development Management Agreement *dated* 12.07.2022 thereby rendering Financial Creditor unconcerned with the said Development Management Agreement or its termination thereof.

10. The Corporate Debtor submits that as per the Development Management Agreement *dated* 12.07.2022, the Development Management Consultant therein was obligated to obtain the Revised Commencement Certificate for the said project within 300 (three-hundred) days from the date of the afore-mentioned Agreement. On failure whereof, the Corporate Debtor contends that it had grounds to terminate the said Development Management Agreement.

11. The Corporate Debtor additionally submits that the terms of arrangement proposed by a new ‘potential’ Development Manager are more lucrative, and that mere replacement of the Development Manager, in the interest of the

project and commitments to the Financial Creditor, cannot be held as breach of the said Development Management Agreement.

Findings

12. Heard the Learned Counsel(s) for the Financial Creditor and the Corporate Debtor.

13. Upon perusal of all record files, we are of the considered view that:

13.1. This Petition has been filed within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition bearing C.P. (IB) No. 776 of 2023 filed by the Financial Creditor.

13.2. The Framework Agreement *dated* 24.08.2022 substantiates the Date of Default, and records amount due and payable to the Financial Creditor by the Corporate Debtor as on 31.05.2022. We have also taken note of the NeSL Report of the Corporate Debtor to validate the same. Additionally, the said Framework Agreement also substantiates the Financial Creditor's right to reinitiate legal proceedings in case(s) wherein the Event of Default has been triggered. The relevant clauses 2(i)(v) and 2(i)(vi) of the said Framework Agreement, are reproduced as hereinafter:

“(v) In the event the Development Management Agreement between the Borrower 1 and the DM Consultant is terminated for any reason whatsoever; or

(vi) ...(contd.) It is agreed by the Borrowers that a breach under any one of the Documents stipulated in this Agreement, will constitute a breach of the entire terms agreed between the Parties under this Agreement. Further, the obligations of the Borrowers contained in this Agreement are to be performed in totality and not as an alternate to each other. ”

13.3 Furthermore, the Corporate Debtor's contention that "*..mere replacement of the Development Manager, in the interest of the project and commitments to the Financial Creditor, cannot be held as breach of the Development Management Agreement*" is devoid of any merits. The relevant clauses 3.1.1 and 3.1.2 of Development Management Agreement dated 12.07.2022 are reproduced as hereinafter against the said contention:

"3.1.1 The Developer hereby appoints the Development Management Consultant, on exclusive and irrevocable basis, as a development management consultant to perform the obligations as specified in this Agreement in respect of the Project for the consideration specified hereunder, on the terms and conditions contained herein and the Development Management Consultant hereby accepts such appointment and agrees to perform the services in respect of the Project for consideration and as per terms of this Agreement.

3.1.2 The Developer shall not during the term of this Agreement deal with, appoint and agree to appoint any Person other than the Development Management consultant in relation to the management, supervision, planning the design, architecture, panning, development, tenant management, marketing and the saes of the unit in this Project or any part thereof or undertake any of the transactions contemplated to be undertaken by the Development Management consultant under this Agreement, unless otherwise provided for under this Agreement and not without prior written consent of the Development Management Consultant and EARC. However, it is hereby clarified that nothing in this Agreement shall restrict the Development Management Consultant from performing and/or provide similar services to any Person."

13.4 Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the IBC, 2016. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of

'debt' due and 'default', for admission of a petition under Section 7 of the IBC, 2016, have been met in this case.

ORDER

It is accordingly hereby ordered as follows:

14. The above **Company Petition No. (IB) 776/2023** is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Richa India Infra Development Private Limited.
15. This Bench hereby appoints **Mr. Rajesh Ramesh Kamath**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01606/2019-2020/12481 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
16. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the Resolution Professional in terms of section 17 of the IBC, 2016. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
17. The Financial Creditor shall deposit a sum of INR 5,00,000/- (Rupees Five-lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
18. There shall be a moratorium under section 14 of the IBC, 2016 in regard to the following:

- (i)* 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;
- (ii)* Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii)* 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv)* The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

19. Notwithstanding the above, during the period of moratorium:

- (i)* The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii)* That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

20. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the Resolution Plan under sub-section (1) of section 31 of the IBC, 2016 or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016 as the case may be.

- 21.** The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- 22.** A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
06.12.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
