NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

1. C.P.(IB)-4542(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **05.05.2022**

NAME OF THE PARTIES: Assets Care & Reconstruction Enterprises Limited

V/s

Geopreneur Corp Private Ltd & Anr.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Pulkit Sharma, counsel appearing for the Petitioner is present through virtual hearing.

Order pronounced in open court vide separate order. In the result, the above Company Petition is admitted. Mr. Ajit Gyanchand Jain having IBBI registration No. IBBI/IPA-/IP-P00368/2017-18/10625 is appointed as Interim Resolution Professional.

Sd/-	Sd/-
CHANDRA BHAN SINGH	H.V. SUBBA RAO
Member (Technical)	Member (Judicial)

/RKS/

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

C.P. No. 4542/IBC/MB/2019

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
ASSETS CARE & RECONSTRUCTION ENTERPRISES LIMITED

Having registered office at: 2nd Floor, 13, Mohan Dev Building, Tolstoy Marg, New Delhi 110001
……**Financial Creditor**
Vs
Geopreneur Corp, Private Limited
(CIN: U454000MH2013PTC245665)
Registered office at: Gala No. 1001, 10th Floor, First Avenue, CTS No. 1199/E of village Malad, Link Road, Malad West, Mumbai 400064
…….**Corporate Debtor**

Order delivered on: 05.05.2022

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Pulkit Sharma, Advocate

For the Respondent: Mr. Sagar Wagle, Advocate

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

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1. This Company petition is filed by *ASSETS CARE & RECONSTRUCTION ENTERPRISES LIMITED* (hereinafter called as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Geopreneur Corp, Private Limited* (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 1,34,14,19,228/-

2. The above Company Petition was originally filed by M/s Altico Capital India Ltd., as Financial Creditor and during the pendency of the above Company Petition M/s Altico Capital India Ltd. assigned the debt to the present Petitioner i.e. M/s Assets Care & Reconstruction Enterprises Ltd vide deed of assignment dated 04.03.2021 in pursuance of which M/s Assets Care & Reconstruction Enterprises Ltd. filed an Application bearing I.A. no. 134/2022 to bring the assignee on record and to continue the proceedings in pursuance of deed of assignment dated 04.03.2021. Accordingly, the said application was allowed by this Bench vide order dated 27.01.2022 and permitted M/s Assets Care & Reconstruction Enterprises Ltd. to continue the proceedings.

3. The Corporate Debtor M/s Geopreneur Corp. Private Limited & Another did not choose to file any reply in the above matter even after two years and therefore this Bench vide its order dated 27.01.2022 forfeited the Corporate Debtor's right to file reply. During the pendency of the above Company Petition, the Corporate Debtor took several adjournments on the pretext of settlement and on 04.03.2022, this Bench passed the following order:

04.03.2022

Mr. Sagar Wagle, counsel appearing for the Respondent and Mr. Pulkit Sharma, counsel appearing for the Petitioner are present through virtual hearing.

Counsel appearing on both sides by consent requested time on the ground that there is a possibility of settlement in the above matter. This Bench hereby directs both parties to complete settlement before next date of hearing failing which the matter would be automatically admitted.

List this matter on ***15.03.2022*** *for reporting settlement/admission.*

Therefore, it is very clear from the above facts that the Corporate Debtor without filing any reply dragged the above Company Petition for more than two years and the conduct of the Corporate Debtor clearly proves that he has no legally valid defences in the above Company Petition. However, the Corporate Debtor after conclusion of final hearing filed written submission along with certain documents in a compilation opposing the above Company Petition on the following grounds:

i. *Promissory Estoppel and no default.*
ii. *No authority in favour of the Financial Creditor to institute, maintain and / or prosecute the present proceedings.*
iii. *Part of purported assignment is rendered invalid and consequently, the entire assignment is rendered invalid.*

4. Let us discuss the above pleas raised by the Corporate Debtor in academic interest. It is the contention of the Corporate Debtor that they have submitted a compromise proposal on 05.08.2021 to the Financial Creditor i.e. Assets Care and Reconstruction Enterprises

Ltd. and also deposited certain amounts in pursuance of the compromise proposal and therefore the Financial Creditor is stopped from filing the above Company Petition.

5. As stated above, the Corporate Debtor annexed certain documents in their compilation running into 24 pages in which the said compromise letter dated 05.08.2021 finds place from page no. 20 to 24. The Financial Creditor in response to the said compromise letter sent NOC in principle for release of mortgage on "Casa Castello" and "Casa Rare" projects subject to the following:

   i. *Pursuant to your offer letter dated August 5, 2021 ("Offer Letter") and further emails exchanged and discussions held between the parties, we have received INR 15,00,00,000/- (Rupees Fifteen Crores) in multiple tranches. However, on account of non-adherence of schedule proposed in the Offer Letter, it has now further been agreed that an additional amount of INR 23,00,000 (Rupees Twenty-Three Lakh only) ("Additional Amount") shall be paid to the Lender in the manner specified in this letter.*

   ii. *The Borrower shall,* ***on or before December 21, 2021,*** *pay the Additional Amount into the following account;*

Account Name:	*INDIA REAL ESTATE 2021 TUST*
Account No.:	*0901102000039905*
***Bank**:*	*IDBI Bank Limited*
IFSC:	*IBKL0000901*

   iii. *Upon completion of the actions specified in paragraph 3 above to our satisfaction, we shall proceed to release our mortgage and charge/hypothecation in respect of Casa Castello and Casa Rare and co-operate with the Borrower in making the requisite filings for effecting such release. All the cost, fees, stamp duty, penalty, expenses and charges for, inter alia, release of the mortgage and charge/hypothecation over the said properties shall be borne* *only by the Borrower, including any cost, fees, stamp duty, penalty, expenses and charges incurred for (a) execution and registration of a release/cancellation deed for cancellation/release of mortgage/charge and (b) making necessary filings with the concerned Registrar of Companies for recording the release of such mortgage/charge.*

iv. *Until the completion of the action specified in paragraph 3 above to our satisfaction, no mortgage/security interest shall be release by us. In any case, notwithstanding this letter and the transactions contemplated herein, all payment and other obligations of the Borrower and the Obligors under the Transaction Documents 9including without limitation, all Security Interest created thereunder) shall continue to be unaffected and remain in full force and effect in accordance with the Transaction Documents.*

v. *Any default by any of the Mortgagors or Borrower of any of the terms of conditions set out in this letter or the Facility Agreement as the case may be, shall constitute a Default under the Transaction Documents, and the lender shall be entitled to exercise all their rights in respect thereof.*

vi. *You shall indemnify and keep indemnified the Lender against any loss, damage, cost and/or expenses suffered/incurred by the Lender arising out of /pursuant to (a) release of the aforesaid mortgage; and / or (b) any act, omission, false statement, suppression of fact and/or any breach of this letter/no objection (NOC) and/or the Facility Agreement.*

6. It appears that the Corporate Debtor except transferring the amount of 23 lakhs as per the NOC dated 13.12.2021 did not comply the remaining terms and conditions of the compromise and on the other hand approached Amer Group of Companies as an

investor who addressed letter dated 10.12.2021 to both the Corporate Debtor and the Financial Creditor that they will invest Rs. 42 crores by way of 50% equity stake in the Corporate Debtor Company subject to further terms mentioned in their letter.

7. Therefore, it is very clear from the very same documents relied by the Corporate Debtor that it is not a simple case of settlement between the parties as portrayed by the Corporate Debtor. It is appropriate to mention here that the Corporate Debtor in the compromise letter dated 05.08.2021 clearly admitted the debt and default and also addressed the said letter to the Assets Care and Reconstruction Enterprises Limited and therefore the Corporate Debtor is estopped from raising all the above pleas more so after admitting the “debt” and “default” and also after accepting the assignee as Financial Creditor and after submitting compromise proposal to them. When once the Corporate Debtor admitted the debt and default, the other contentions with regard to the enforcement of alleged compromise proposal and breach of the terms and conditions if any by either of the parties are beyond the scope of this Petition.

8. For the aforesaid reasons, this Bench is of the considered view that no credence can be given to the defences raised by the Corporate Debtor in their written submission even for academic purpose and are liable to be rejected. This Bench is also of the considered opinion that the “debt” and “default” are proved in this case through own admission of the Corporate Debtor and the above Company Petition is well within limitation. The Financial Creditor also suggested the name of the Interim Resolution Professional along with his consent letter in Form-II and thus, the present Company Petition satisfies all the necessary requirements for admission and this Bench did not find any reasons to reject the

same. Accordingly, the Company Petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -4542(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Geopreneur Corp. Private Limited and Anr.

b. This Bench hereby appoints **CA Ajit Gyanchand Jain** (ajit@vcanca.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00368/2017-18/10625 having registered office at: 204, Wallstreet-1, Near Gujarat College, Ellisbridge, Ahmedabad, Gujrat- 380006 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 Lakh 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.

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/- Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

H.V. SUBBA RAO
MEMBER (JUDICIAL)