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**BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 84/7/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 05.09.2017**

Name of the Company: Edelweiss Asset Reconstruction Co. Ltd.
V/s.
Kalptaru Alloys Pvt. Ltd.

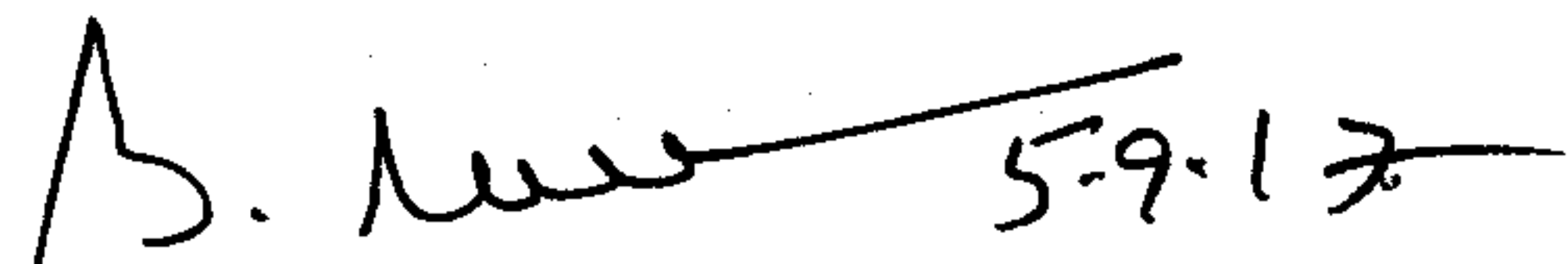
Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Baiju Bhagat	Advocate	Applicant	
2.				

ORDER

Learned Advocate Mr. Baiju Bhagat present for Financial Creditor/ Applicant. None present for Respondent.

Order pronounced in open court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 5th day of September, 2017.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 84/7/NCLT/AHM/2017

In the matter of:

Edelweiss Asset Reconstruction Co. Ltd.,
Registered Office at
'Edelweiss House'
Off CST Road
Kalina
Santacruz (East)
Mumbai-400098

: Applicant.
[Financial Creditor]

Versus

Kalptaru Alloys Private Limited
Registered Office at
701, Avdhesh,
Opposite-Gurudwara,
Thaltej Cross Road,
Ahmedabad-380054
Gujarat.

: Respondent.
[Corporate Debtor]

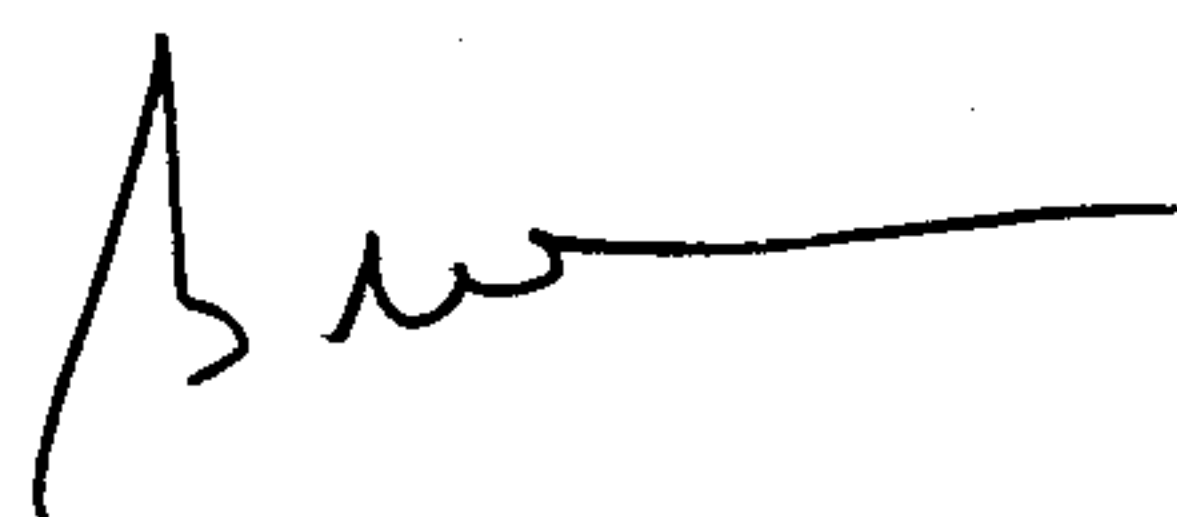
Order delivered on 5th September, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

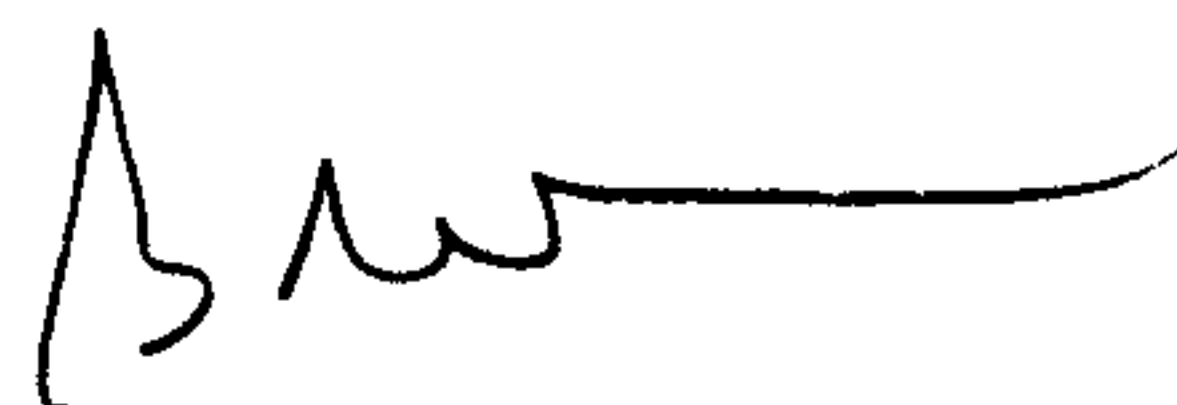
Shri Baiju Bhagat, learned Advocate for Applicant/Financial
Creditor.

Shri Ritesh Patadia, learned Advocate for Respondent/Corporate
Debtor.



ORDER

1. Edelweiss Asset Reconstruction Co. Ltd., acting as 'Trustee' of EARC Trust SC 143, filed this Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ["IB Code" for short] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("IB Rules" for short) styling itself as 'Financial Creditor' for initiation of Corporate Insolvency Resolution Process in respect of Kalptaru Alloys Private Limited, treating it as 'Corporate Debtor'.
2. Respondent Company is a Private Limited Company incorporated under the Companies Act having its Registered Office in Thaltej Cross Road, Ahmedabad. The Authorised Share Capital of the Respondent Company is 7,50,00,000. The Paid-Up Capital of the Respondent Company is Rs. 3,90,25,000. The Main Object of the Respondent Company is to carry on business of manufacturing of MS Ingots (raw material for steel making).
3. Respondent approached Indian Overseas Bank (IOB) in 2004 for credit facilities for the purpose of business. IOB sanctioned Cash Credit, Letter of Credit, Letter of Guarantee and various Term Loan facilities to the Respondent Company amounting 28.61 Crores vide Sanction Letter dated 23.02.2012. Respondent Company in evidence of the loans borrowed executed relevant loan and security documents in favour of IOB on various dates, the last one being in 2012. Respondent also executed Hypothecation Agreements, Guarantee Agreements, Term Loan Agreements in favour of IOB. On 23rd February, 2012, IOB sanctioned/renewed/enhanced the following facilities to the Respondent;
 1. Cash Credit – Rs.4.50 Crs.(Renewal)
 2. WCTL – Rs.5.72 Crs.(Renewal; original limit was Rs.7.50 Crs.)



3. Term Loan I – Rs.0.52 Crs.(Renewal; original limit was of Rs. 3.00 Crs)
4. Term Loan II – Rs.0.66 Crs.(Renewal; original limit was of Rs. 2.85 Crs.)
5. Term Loan III – Rs.1.03 Crs (Renewal; original limit was of Rs. 3.25 Crs.)
6. Term Loan IV – Rs.7.08 Crs (Renewal; original limit was of Rs. 7.20 Crs.)
7. Term Loan (Fresh) for purchase of plant and machineries costing 6.80 Crs. Rs.5.10 Crs.
8. Letter of Credit – Rs. 4.00 Crs.(renewal); Sub Limit: Letter of Guarantee – (4.00 Crs) enhanced from 0.50 lacs.

4. Respondent also created mortgage in favour of IOB. Respondent also created a charge of hypothecation in favour of IOB on its moveables including machinery, tools, accessories etc.

5. Applicant also filed Sanction Letters, Term Loan Agreement, Guarantee Agreement, Demand Promissory Note etc.

6. In spite of repeated demands, Respondent Company did not choose to make payments. Respondent Company in respect of Working Capital and Term Loan facilities, executed several Revival Letters dated 17.9.2007, 25.7.2008, 28.4.2009, 29.1.2011 and 19.7.2013 acknowledging its liability.

7. IOB executed Assignment Agreement dated 22.7.2015 in favour of Edelweiss Asset Reconstruction Co. Ltd., (Applicant) whereunder IOB assigned the debt due to it from the Respondent Company to the Applicant Company, which is also signed by the Authorised Signatory of the IOB. The Assignor under the Assignment Agreement dated 22.7.2015 assigned the debts of the Respondent Company along with all rights, title and interest to the Applicant herein. Respondent Company is liable to pay to the Applicant an unpaid debt



of Rs. 46,75,80,181/- as on 30th June, 2017 as Principal Borrower, with interest till the date of realisation.

8. It is further stated in the Application that Respondent Company has lost its substratum and is not in a position to clear outstanding liabilities to the Applicant Company. Respondent Company filed its last Annual Return for the financial year ended March 2015 only. Applicant filed the Certificate issued under Bankers' Books Evidence Act. Applicant named Mr. Anil Kohli as Interim Resolution Professional and filed his Written Communication in Form No.2.

9. Applicant served copy of the Application on the Respondent Company and filed proof of despatch. The matter was listed before the Adjudicating Authority for the first time on 17th August, 2017. This Adjudicating Authority directed the Applicant to serve notice of date of hearing on the Respondent. Accordingly, Applicant served notice of date of hearing on the Respondent. Respondent appeared through learned Counsel. Learned Counsel for the Respondent requested time to file Objections and ultimately filed Objections on 30th August, 2017. The following are the objections raised by the Respondent in its Objections;

(a) The Applicant has not disclosed the nature of default and the details of default;

(b) Respondent is not a party to the assignment proceedings and there is no privity of contract between the Applicant and the Respondent;

(c) The proceedings are barred by limitation, since the last demand notice is dated 7.3.2014. It is stated that the provisions of Section 433 of the Companies Act make the provisions of Limitation Act applicable before the National Company Law Tribunal and its mechanism cannot be used to recover time barred debts;

(d) IOB already initiated proceedings against the Respondent Company under the provisions of the SARFAESI Act. Respondent is disputing the outstanding amount. The mandatory period of 14 days has already expired.

(e) The Respondent has no information about the proposed Interim Resolution Professional.

10. Considering the provisions of Section 7 of the Code read with Rule 4 of the Rules and the instructions contained in Form-1, the Application is complete in all respects.

11. The first and foremost objection raised by the Respondent is that the provisions of Limitation Act are applicable before this Adjudicating Authority in view of Section 433 of the Companies Act basing on the last demand notice dated 7.3.2014. Even assuming that the last demand notice was on 7.3.2014, in view of the balance confirmation letter signed by the Respondent Company on 31.12.2014, the debt is within the limitation period. Therefore, the proceedings initiated under this Application are within limitation, even assuming that the provisions of the Limitation Act are applicable to the proceedings before this Adjudicating Authority.

12. The second objection raised is regarding initiation of proceedings under SARFAESI Act by the IOB. The initiation of proceedings under SARFAESI Act by the IOB is no bar for initiation of insolvency proceedings under IB Code in view of the overriding effect given to the provisions of IOB in Section 238 of the IB Code.

13. The third objection raised by the Respondent is that there must be ascertainment of debt before admitting the Application. In view of the Judgment of the Hon'ble National Company Law Appellate Tribunal rendered in *Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017* in the matter of ***M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.***, reported in **2017 SCC Online NCLAT Page 17**, this

Adjudicating Authority, on receipt of application filed by the Financial Creditor under Section 7 of the Code, is required to satisfy –

- (a) *Whether a default has occurred;*
- (b) *Whether an application is complete; and*
- (c) *Whether any disciplinary proceeding is against the proposed Insolvency Resolution Professional.*

In the above said decision, the Hon'ble Appellate Tribunal further held that once the Adjudicating Authority is satisfied on all the above aspects, it is required to admit the case.

14. Now, I proceed to examine whether a default has occurred. A perusal of the Certificate under the Bankers' Books Evidence Act, which is available at Exhibit 'K' collectively at Pages 218 to 233 of the Application shows that there is a debt due from the Respondent Company to IOB and the Respondent Company committed default in repayment of the same. The existence of debt is also proved by the documents such as Loan Agreements, Guarantee Agreements, Demand Promissory Note etc., executed by the Respondent Company. Respondent Company also executed several Revival Letters admitting the liability. Respondent Company also executed Balance Confirmation Letters, the last one being 31st December, 2014.

14.1. The above said documents clearly establish that the Respondent borrowed monies from the Indian Overseas Bank with an agreement to pay interest and therefore the amount due to IOB from the Respondent is a 'financial debt' within the meaning of Clause (a) of sub-section (8) of Section 5 of the Code. The debt is due from the Respondent Company which is registered under the Companies Act. Therefore, the Respondent is a 'Corporate Debtor'.

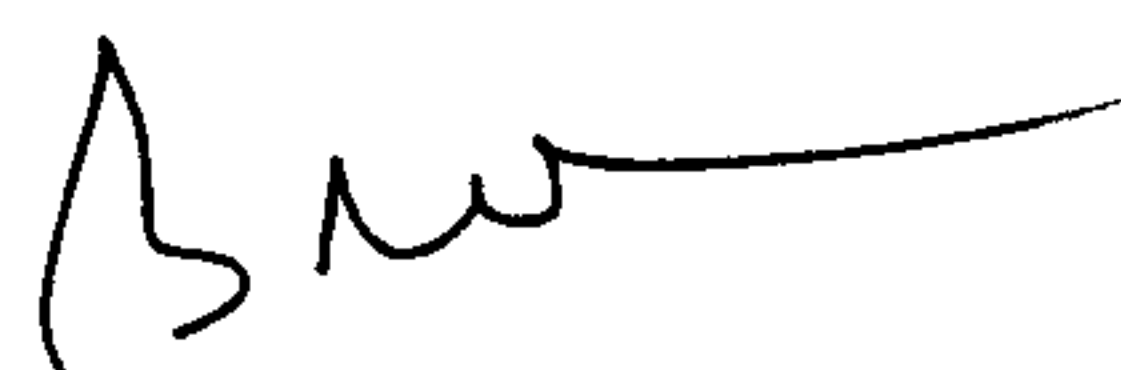
15. The other objection raised by the learned Counsel for the Respondent is that there is no privity of contract between the

Applicant and the Respondent and Respondent is not a party to the Assignment Agreement.

15.1. A perusal of the Assignment Agreement dated 22nd July, 2015, which is available at Page No. 53 of the Application, clearly goes to show that the Indian Overseas Bank assigned its debt to the Applicant Company which is an Asset Reconstruction Company and the same is within the knowledge of the Respondent Company.

16. Rule 4(1) of the IB Rules says, a Financial Creditor either by itself or jointly are entitled to file an application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of the IB Code in Form No.1.

16.1. Sub-Rule (2) of Rule 4 of the IB Rules says, where the Applicant is an Assignee, the Application shall be accompanied by a copy of the Assignment Deed. In the case on hand, the Applicant is the Assignee of the debt from the Indian Overseas Bank in an Assignment Deed. The copy of the Assignment Agreement dated 22nd July, 2015 is filed along with the Application. Therefore, the Assignee of the debt is also entitled to file Application and such Assignee steps into the shoes of the Financial Creditor. Therefore, this Application filed by the Applicant is an application by an Assignee of the Financial Creditor and therefore the Applicant is entitled to file this Application. The argument of the learned Counsel for the Respondent that there is no privity of contract between the Applicant and the Respondent do not merit acceptance for the simple reason that Respondent Company agreed to repay the outstanding loan amounts either to the Indian Overseas Bank or to its Assignee or Transferee as contemplated in all the Loan Agreements and other documents. Therefore, the contention of the learned Counsel for the Respondent that the Applicant being the Assignor of the financial debt is not entitled to file this Application, do not merit acceptance.



17. The Applicant proposed the name of Interim Resolution Professional and filed his Written Communication in Form No.2.

18. In view of the above discussion, the Application deserves to be admitted and it is accordingly admitted under Section 7(5)(a) of the IB Code. This Adjudicating Authority is hereby appoint Shri Anil Kohli, as 'Interim Insolvency Resolution Professional' having address at 1011, Kirti Shikhar, District Centre Janak Puri, New Delhi-110058 and having Registration No. IBBI/IPA-001/IP-P00112/2017-18/10219 under Section 13 (1) (c) of the Code.

19. The Interim Insolvency Resolution Professional is hereby directed to cause a public announcement of the initiation of 'Corporate Insolvency Resolution Process' and call for submission of claims under Section 13(1)(b) read with Section 15 of the Code and Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. This Adjudicating Authority hereby order moratorium under Section 13(1)(a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;

(a) 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;

(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

(i) However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.

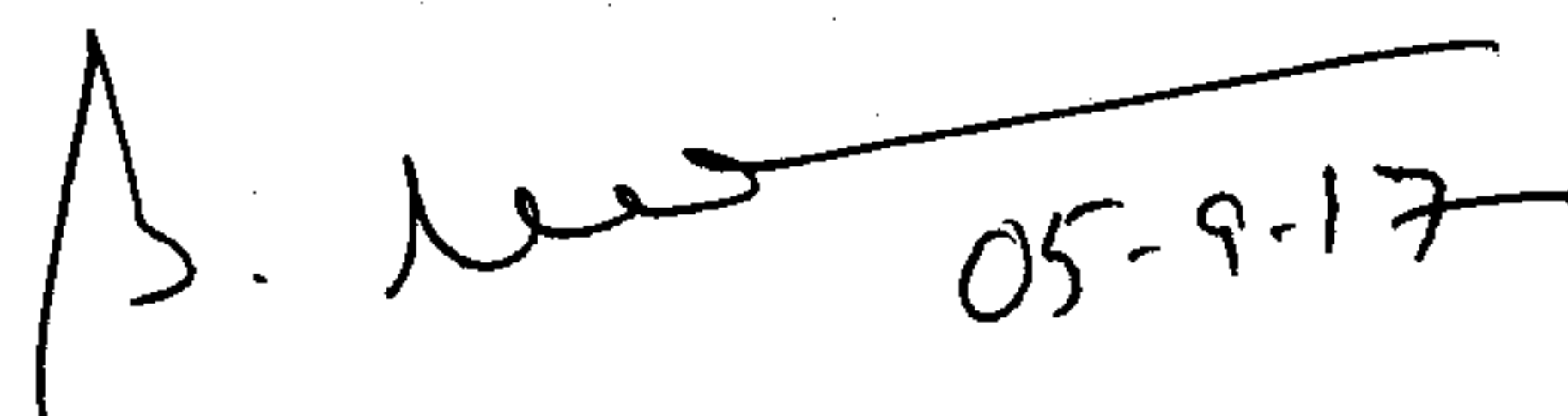
(ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.

(iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

21. This Application is disposed of accordingly. No order as to costs.

22. Communicate a copy of this order to the Applicant Financial Creditor, and to the Respondent Corporate Debtor and to the Interim Insolvency Resolution Professional.

Signature:

Handwritten signature of Sri Bikki Raveendra Babu, dated 05-9-17.

**Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.**