

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH - II**  
**IB-71/ND/2019**

**IN THE MATTER OF:**

**Edelweiss Asset Reconstruction Company Ltd.,  
Edelweiss House, Off., CST Road,  
Kalina, Mumbai – 400098.**

**...Applicant**

**VERSUS**

**Pawan Doot Estate Pvt. Ltd.,  
B-292, Chandra Kanta Complex,  
Shop No. 8, Near Metro Pillar No.161,  
New Ashok Nagar,  
New Delhi – 110096.**

**...Respondent**

**Order Delivered on:10.05.2019**

**CORAM:**

**MS. INA MALHOTRA, MEMBER(JUDICIAL)**

**DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)**

PRESENT – Shreyas Mehrotra, Advocate for the Applicant

Sunit Malhotra, Mansyumer Singh, Smridhi Gogia, Advocates for  
Respondent



**ORDER**

**Per Dr. V. K. Subburaj (Member Technical)**

1. This is an application filed by Edelweiss Asset Reconstruction Company Ltd. ("Applicant") invoking the provision of Section 7 of Insolvency and Bankruptcy Code, 2016 ("the Code") against Pawan Doot Estate Pvt. Ltd. ("Respondent") for initiating Corporate Insolvency Resolution Process ("CIRP") against the Respondent for a claim of Rs.4,13,65,00,483/-.
  
2. The Applicant has averred as follows:
  - a. ECL Finance Limited had on request of Era Landmarks Limited, sanctioned facility aggregating to Rs. 170 crores alongwith applicable interest @20.5% p.a. vide its sanction letter dated 04.10.2013 which was accepted by Era Landmarks on 07.10.2013. A loan agreement dated 07.10.2013 was executed between ECL and Era Landmarks whereby ECL sanctioned Rs. 170 crores to the Era Landmarks. The Respondent executed a guarantee agreement in favour of ECL to secure the credit facility sanctioned to Era Landmarks.
  
  - b. On 31.12.2015 the account of Era Landmarks was classified as Non Performing Asset ("NPA"). ECL assigned the debt of Era Landmarks along with all the rights, title and interest in the underlying securities and guarantees to the Applicant pursuant to

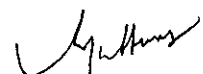


Assignment Agreement dated 23.03.2017 executed between ECL and the Applicant and duly registered on 13.07.2017.

- c. On 02.07.2018, a recall notice was issued by the Applicant whereby the credit facility sanctioned to Era Landmarks was recalled owing to default and directed Era Landmarks to pay a sum of Rs.265,02,50,181/- within 7 days from the date of notice together with interest and other charges.
- d. On 10.07.2018 the Applicant issued notice for invocation of the corporate guarantee to the Respondent and other corporate guarantors demanding them to pay a sum of Rs.265,02,50,181/- within 7 days from the date of notice together with interest and other charges thereon from 01.03.2017 till payment.

3. The Respondent has made the following contentions in its reply:

- i. The affidavit accompanying the present application has been signed by one Ms. Angira Chakraborty on behalf of the Applicant while deriving authority to do so from a purported resolution dated 25.10.2018. A perusal of the resolution reveals that the same is not a resolution passed in a meeting of the board of directors of the Applicant but is a mere true copy of a resolution purportedly passed in a meeting of the Operations Committee of the Applicant. There is no material on record to show the legal formation of the said Operations Committee and whether the said Committee is



- even empowered by the board of directors of the Applicant to authorize any person/employee to sign the present application.
- ii. The requirements of Rule 34 of the National Company Law Tribunal Rules, 2016 for initiation of CIRP by the Applicant are not fulfilled. The application is not complete as per the requirements of abovementioned rule inasmuch as notice of admission is not given along with the application. Further, the date on the first page of Form 1 at page 6 is undated and this is clear violation of Rule 4 of Insolvency and Bankruptcy (Application to Adjudication Authority) rules, 2016.
  - iii. Another defect in Form 1 filed by the Applicant is at page 10 wherein the title of Part IV reads "Particulars of Financial Debt of Rs.170 Crores Only" whereas it ought to read "Particulars of Financial Debt".
  - iv. The Applicant herein has not provided a date of default in Part IV of the Form 1 in the present application. The Applicant at page 12 has frivolously stated that the facility has been recalled by the Applicant vide recall notice with reference no. EdelARC/1128/2018-19 dated 02.07.2018 and the corporate guarantee issued by the Corporate Guarantor for securing the amounts lent to Era Landmarks vide notice for invocation of corporate guarantee dated 10.07.2018.

- v. The total amount of Rs.413,65,00,483/- stated to be in default at page 11 is grossly inflated and the applicant herein has been unable to substantiate the same in the present application. In fact, the Applicant herein has been charging exorbitant rates of interest, increasing the same from time to time unreasonably. Thus, the said amount is disputed and is liable for further verification.
4. We have perused the documents filed by the parties and heard the arguments of both the sides. The Respondent has raised issues mainly on technical grounds with regard to the authorization of the signatory of the Applicant and the technical defects within the application in Form 1. Another issue that the Respondent has raised is regarding the amount claimed which has been alleged to be an inflated amount charged due to exorbitant interest rates.
5. The application seems to be signed by a signatory of duly authorized by the Operations Committee of the Applicant Company. It is a common practice for the board of directors to form different committees of the board of directors dealing with different areas of the business and exercising the powers of the board of directors. Thus, on the face of it, no fault can be found with the authorization of the signatory to the application. The grounds regarding the notice of admission, date on first page of Form I and the title of Part IV are very minor defects in the form



and are not relevant to the main issue at hand i.e. whether there exists a debt and default justifying initiation of CIRP of the Respondent. With regard to date of default it is very clear that the default occurred when the Respondent failed to repay the loan within seven days as stated in the letter dated 10.07.2018 issued by the Applicant to the Respondent and thus, no question exists regarding the default date.

6. The Respondent has also stated that the amount claimed to be in default is an inflated amount charged due to the exorbitant interest rates. The amount is claimed to be disputed by the Respondent due to the interest rates, however, the default is not denied and cannot be denied in face of the material available on record. The protection of a dispute regarding the exact amount is not available to a corporate debtor in Section 7 proceedings. Since default has been established the task of determining the exact and fair amount due to the Applicant by the Respondent can fall on the insolvency resolution professional.
7. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

*“(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 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.*

*(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 moratorium period.*

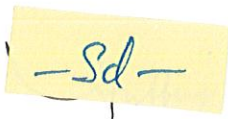
*(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*



(4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”*

8. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Darshan Singh Anand (email: [darshan\\_singh@sumedhamanagement.com](mailto:darshan_singh@sumedhamanagement.com), contact no: 011-41654481/82) and being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

9. Renotify this case for report of the IRP on 27.05.2019.



**Dr. V.K. SUBBURAJ**

**Member (TECHNICAL)**



**INA MALHOTRA**

**Member (JUDICIAL)**

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