

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P. NO.IB-1237(PB)/2018

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd
.....Petitioner

Vs.

Angad Infrastructure Pvt Ltd
.....Respondent

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on: 25.10.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For Petitioner : Mr. Atul Sharma, Mr. Vikram Babbar, Ms. Yamini Khurana, Advs.

For Respondent : Ms. Manisha Chaudhary, Mr. Mansumer Singh, Ms. Deepti Bhardwaj, Advs.



ORDER

M.M.KUMAR, PRESIDENT

The Petitioner claiming to be a financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Angad Infrastructure Pvt Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditor' is a company incorporated under the provisions of the Companies Act, 1956 and registered with the Reserve Bank of India (RBI) as an Asset Reconstruction Company registered under section-3 of the SARFESI Act, 2002, acting in its capacity as trustee for EARC Trust – SC 251 and having its registered office at Edelweiss House, Off CST Road, Kalina, Mumbai – 400098, acting through its branch at Unit No. 10 & 12, Upper Ground Floor, Mercantile House, 15 Kasturba Gandhi Marg, New Delhi – 110001.



2. The Corporate Debtor – Angad Infrastructure Pvt Ltd was incorporated on 25.11.2005. The identification number of the Corporate Debtor given is CIN U70101DL2005PTC143003 and its registered office is situated at B 292, Chandra Kanta Complex, Shop No. 8, Near Metro Pillar No. 161, New Ashok Nagar, New Delhi - 110096. The authorised share capital of the company is Rs. 5,00,000/- (Rupees Five Lakhs only) and the Paid-up share capital is Rs. 1,00,000/- (Rupees One Lakh only) respectively.

3. It is submitted by the Petitioner that ECL Finance Limited had sanctioned a facility of Rs. 170 Crores (Rupees One Hundred Seventy Crores Only) vide its sanction letter dated 04.10.2013 which was duly acknowledged and accepted by Adel Landmarks Limited (formerly known as Era Landmarks Limited) on 07.10.2013. Subsequently, a Loan Agreement dated 07.10.2013 was executed between ECL Finance Limited and Adel Landmarks Limited (formerly known as Era Landmarks Limited).



4. The Respondent – Corporate Debtor in order to secure the credit facility sanctioned to Adel Landmarks Limited for a sum of Rs. 170 Crore had executed a Guarantee Agreement in favour of ECL Finance Limited (Annexure 8). Further to secure the credit facility sanctioned to Adel Landmarks Limited, the Corporate Debtor had created a mortgage on its immovable properties and executed a Declaration and Undertaking in connection with the said mortgage in favour of ECL Finance Limited.

5. That ECL Finance Limited (the ‘Assignor’), vide Assignment Agreement (Annexure 7) dated 23.03.2017, assigned the debt, along with all the rights, title and interest in the said securities and guarantees in favour of Edelweiss Asset Reconstruction Company Ltd (the ‘Assignee’) – the Petitioner-Financial Creditor in the present case. The Agreement was registered on 13.07.2017 with the registration number 4496/2017 in the Office of Sub-Registrar II at Noida , Uttar Pradesh.



6. As per the averments of the 'Financial Creditor', the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 31.12.2015 in the books of ECL Finance Limited.
7. It is also submitted by the Petitioner – Financial Creditor that a Loan Recall Notice (Annexure 12(Colly) d.) dated 02.07.2018 was issued whereby the credit facility sanctioned to Adel Landmarks Limited was recalled and was asked to pay a sum of Rs. 265,02,50,181.47/- (Rupees Two Hundred and Sixty Five Crore Two Lakh Fifty Thousand One Hundred Eighty One and Forty Seven Paise Only) together with interest and other charges thereon from 01.03.017 till payment/ realization in full and redeem the pledge and other securities within seven days from the date of notice.
8. Further it is submitted by the Petitioner that the Financial Creditor issued a notice dated 10.07.2018 (Annexure 12(Colly) e.) for invocation of Corporate Guarantee to the Corporate Debtor-Respondent demanding them to pay a sum of Rs. 265,02,50,181.47/- (Rupees Two Hundred and Sixty



Five Crore Two Lakh Fifty Thousand One Hundred Eighty One and Forty Seven Paisa Only) together with interest and other charges thereon from 01.03.2017 till payment/realization in full and redeem the pledge and other securities within seven days from the date of notice.

9. The precise case of the Petitioners is that the financial debt to the tune of Rs. 265,02,50,181.47/- (Rupees Two Hundred and Sixty Five Crore Two Lakh Fifty Thousand One Hundred Eighty One and Forty Seven Paisa Only) has accrued in favour of the Financial Creditors as per the Assignment Agreement dated 23.03.2017 (Annexure 7).

10. The Financial Creditor has proposed the name of Mr. Darshan Singh Anand as the Insolvency Professional with the address EG-46, Inder Puri, New Delhi-110012, E-mail id darshan_singh@sumedhamanagement.com and Mobile No. 7499680526. His registration number is IBBI/IPA-002/IP-N00326/2017-18/10931. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 along with the certificate of registration. He has declared that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosure has been made as per the requirement of the IBBI Regulations.

11. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt.

PARTICULARS OF FINANCIAL DEBT		
1.	Total amount of debt granted Date(s) of disbursement	The Corporate Debtor guaranteed repayment of debt of INR. 170 Crores together with interest, additional interest and other monies ("Debt") by Adel Landmarks Limited (formerly known as Era Landmarks Limited). The following are the details of the disbursement of the amounts to Era Landmarks Limited in terms of the Loan Agreement (Annexure 6) dated 07.10.2013:

		LOAN ACCOUNT NO.
		CL/FRG/WH00074/B1.197
Date	of	Amounts
Disbursement		Disbursed
		(In Rs.)
21.10.2013		54,31,00,000/-
22.10.2013		2,40,000/-
23.10.2013		11,23,000/-
29.10.2013		106,77,00,000/-
30.10.2013		51,60,000/-
07.11.2013		2,00,00,000/-
30.11.2013		2,75,26,500/-
31.12.2013		2,90,10,000/-
07.04.2014		20,00,000/-
2.	Amount claimed to be in default and the date on which the default occurred	The facilities availed from the Financial creditor by Adel Landmarks and guaranteed by the Corporate Debtor is outstanding and the total amount in default is INR. 382,40,80,075/- (Rupees Three Hundred Eighty Two Crores Forty Lakhs eighty Thousand Seventy Five Only) as on July 31,2018.

		A tabular chart depicting working of the amount in default and days of default is attached (Annexure 9).
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12. In column 2 of part IV the total amount of debt granted and the date on which the amount was disbursed, have been stated. According to the averments made by the Financial Creditor-Edelweiss Asset Reconstruction Company Ltd the aforesaid facility was availed by Adel Landmarks Limited and guaranteed by the Corporate Debtor. The total overdue amount in default as on 31.07.2018 is INR. 382,40,80,075/- (Rupees Three Hundred Eighty Two Crores Forty Lakhs eighty Thousand Seventy Five Only) (Annexure 9).

13. It is submitted by the Financial Creditor that on 12.10.2013, the Corporate Debtor – Respondent in order to secure the credit facility sanctioned to Adel Landmarks Limited for a sum of Rs. 170 Crores created mortgage on its immovable properties situated at Village Kasar, Tehsil Bahadurgarh, District – Jhajjar in the State of Haryana and



executed a Declaration and Undertaking in connection with the said mortgage in favour of ECL Finance Limited.

14. In Part V of the Petition the details of the above said mortgaged property is mentioned which is as under :

Part-V

PARTICULARS OF FINANCIAL DEBT

(DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT)

1.	Particulars of security held, if any, the date of its creation, its estimated value as per the creditor.																																	
	Attach a copy of a certificate of registration of charge issued by the registrar of companies (if the corporate debtor is a company).																																	
	Sr. No.	Name and Date of the Document Executed	Description of the Securities																															
	1	Declaration and Undertaking from Angad Infrastructure Private Limited ("Mortgagor") dated 12.10.2013 along with Form 8	<p>Second charge over all those piece and parcel of land:</p> <p>Situated at Village Kasar, Tehsil Bahadurgarh, District Jhajjar in State of Haryana and covered by following Khewat No./ Khatuni No./ Kila No./ Khasra nos.</p> <table border="1" style="width: 100%;"> <tr> <th colspan="4">DESCRIPTION OF PROPERTY</th> </tr> <tr> <th colspan="4">KHEWAT NO. 75/65, KHATA NO. 106</th> </tr> <tr> <th rowspan="2">KILA NO.</th> <th rowspan="2">KHASRA NO.</th> <th colspan="2">AREA</th> </tr> <tr> <th>KANAL</th> <th>MARLA</th> </tr> <tr> <td rowspan="2">65</td> <td>16/2</td> <td>4</td> <td>18</td> </tr> <tr> <td>25</td> <td>8</td> <td>0</td> </tr> <tr> <th colspan="4">KHEWAT No. 87/77 KHATA NO. 128 MIN</th> </tr> <tr> <th rowspan="2">KILA NO.</th> <th rowspan="2">KHASRA NO.</th> <th colspan="2">AREA</th> </tr> <tr> <th>KANAL</th> <th>MARLA</th> </tr> </table>	DESCRIPTION OF PROPERTY				KHEWAT NO. 75/65, KHATA NO. 106				KILA NO.	KHASRA NO.	AREA		KANAL	MARLA	65	16/2	4	18	25	8	0	KHEWAT No. 87/77 KHATA NO. 128 MIN				KILA NO.	KHASRA NO.	AREA		KANAL	MARLA
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		KANAL	MARLA																															

66	2	8	0
	3	7	12
	4	7	8
	9/1	6	18
	10/2	6	3
	26	0	8
TOTAL		36	9
KHEWAT NO. 18/17, KHATA NO.22 MIN			
KILA NO.	KHASRA NO.	AREA	
		KANAL	MARLA
65	3/2	0	16
	4	7	19
	5/1	3	16
	27	0	1
TOTAL AREA		12	12
KHEWAT NO. 1/1, KHATA NO. 1			
KILA NO.	KHASRA NO.	AREA	
		KANAL	MARLA
55	21/1	6	8
56	25	7	12
65	1	7	12
	2	8	0
TOTAL AREA		29	12
AREA MORTGAGED : 5/6 OF 29 K 12 M			
i.e. 24 K 13 M			
KHEWAT NO. 5/5 KHATA NO.5			
KILA NO.	KHASRA NO.	AREA	
		KANAL	MARLA
56/26	--	0	3
TOTAL AREA		0	3
AREA MORTGAGED : 5/12 OF 3 M i.e. 0 K 12 M			

11

			<p>Together with all buildings and structures constructed/ to be constructed thereon and anything attached to the earth or permanently fastened to anything attached to the earth , fixtures and fittings erected/ installed or to be erected/ installed and every part thereof.</p> <p>A COPY OF THE ABOVE MENTIONED DOCUMENTS ARE ATTACHED ANNEXURE – 10(COLLY).</p>	
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15. The entries and statement of account depicted in the Ledger Account of Adel Landmarks Limited as maintained by the Financial Creditor regarding the outstanding amount pertaining to the Rupee Term Loan along with the calculation of the amount till 31.07.2018 has been annexed (ANNEXURE 11(COLLY)).

16. A reply to the petition is filed by one Mr. Mohammad Haroon, being the Authorized signatory of the Respondent-Corporate Debtor, given authority vide Board Resolution dated 18.09.2018.



17. In the said Reply filed on 05.10.2018 the Respondent-Corporate Debtor admits the default and further states that it is not in a position to repay the said 'financial debt' as the business of the company has severely suffered due to the down-turn taken by the real estate industry. However, the Corporate Debtor submits that the amount claimed by the Petitioner- Financial Creditor seems to be inflated and the same is subject matter of further verification.

18. In view of the aforesaid statement made by the learned counsel for the Respondent-Corporate Debtor, we find that advancement of loan and default stand admitted. Even Otherwise there is overwhelming documentary evidence on record as is evident from a perusal of para 4,5 and para 11-15 to support those findings in the case.

19. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, he has submitted that the application is complete as per the requirements of



Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. He has further submitted that the details of default along with its dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

20. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we may first examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

“Initiation of corporate insolvency resolution process by financial creditor.

7 (1)

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be

 prescribed.

7 (3)

7 (4)

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b)"

21. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the Performa prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of IBC. We are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary



proceedings pending against the proposed Interim Resolution Professional.

22. As a sequel to the above discussion, this petition is admitted and Mr. Darshan Singh Anand with the address EG-46, Inder Puri, Delhi-110012, Email-id: darshan_singh@sumedhamanagement.com and Mobile No. 7499680526. His registration number is IBBI/IPA-002/IP-N00326/2017-18/10931 is appointed as the Interim Resolution Professional.

23. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately make public announcement with regard to admission of this application under Section 7 of the Code. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:



“(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;

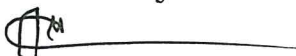
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified



is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *inter alia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation by the ex-management or its ex-directors the



Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

26. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sdl-
(M.M.KUMAR) 25.10.2018
PRESIDENT

Sdl-
(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

25.10.2018
(VIDYA)