

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1289(PB)/2018

IN THE MATTER OF:

EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED

.....FINANCIAL CREDITOR/PETITIONER

V.

MANSAROVAR HERITAGE INN PVT. LTD.

.....CORPORATE DEBTOR/RESPONDENT

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

Judgment delivered on 30.01.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR

HON'BLE PRESIDENT

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

PRESENTS:

For the Petitioner:

Mr. Atul Sharma & Mr. Aditya Vashisth, Advs.

For the Respondent:

Ms. Manisha Chaudhary, Mr. Mansumyer Singh
& Mr. Himanshu Handa, Advs.

M.M. KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Edelweiss Asset Reconstruction Company Limited has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of Mansarovar Heritage Inn Private Limited (for brevity 'the Corporate Debtor'). It is appropriate to mention

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that the financial creditor is a company incorporated on 05.10.2007 under the Companies Act, 1956 and registered as an asset reconstruction company pursuant to Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and acting in its capacity as trustee for EARC Trust-SC251. Its assigned identification number U67100MH2007PLC174759. It has its registered office at Edelweiss House, Off. CST Road, Kalina, Mumbai-400098 and acting through its Branch office at Unit No. 10 & 12, Upper Ground Floor, Mercantile House, 15, Kasturba Gandhi Marg, New Delhi-110001.

2. Ms. Angira Chakraborty, Law Associate and Authorized Representative of the Financial Creditor-Bank has been empowered to sign and submit the petition by the Board Resolution dated 11.05.2018 (Annexure-1) passed by the Operations Committee of the Financial Creditor.

3. The 'Corporate Debtor'-Mansarovar Heritage Inn Private Limited was incorporated on 13.11.1997. The identification number of the Corporate Debtor is U55102DL1997PTC178066 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. Its authorised share capital is Rs. 1,00,000.00/- and the paid up share capital is Rs. 1,00,000.00/- as per the master data available on the website of Ministry of Corporate Affairs which has been placed on record (Annexure-2).

4. The Financial Creditor has proposed the name of Resolution Professional, Shri Darshan Singh Anand, EG-46, Inder Puri, New Delhi-110012, email id – darshan_singh@sumedhamanagement.com, Mobile No. 74996-80526 to act as Interim Resolution Professional. He has registration No. IBBI/IPA-002/IP-N00326/2017-18/10931. He has also made declaration and sent a written communication [Annexure-4 (Colly)]. According to the declaration, Mr. Darshan Singh Anand has no disciplinary proceedings pending against him with the Insolvency and Bankruptcy Board of India or ICSI Institute of Insolvency Professionals. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

5. In the application, the Financial Creditor has given the details of financial debt granted to the Corporate Debtor with the



dates of disbursement. A perusal of part IV of the application would show the following particulars of financial debt:

PARTICULARS OF FINANCIAL DEBT OF RS. 170.0 CRORES (RUPEES ONE HUNDRED AND SEVENTY CRORES ONLY)		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>The Corporate debtor guaranteed repayment of a debt aggregating to INR. 170.0 Crores (Rupees One Hundred Seventy Crores Only) together with the interest, additional interest and other monies ("Debt") sanctioned to Adel Landmarks Limited (formerly known as Era Landmarks Limited.)</p> <p>The corporate guarantee issued by the Corporate Debtor for securing the Debt extended to Adel Landmarks Limited (formerly known as Era Landmarks Limited) was invoked by the Financial Creditor vide notice of invocation of corporate guarantee with reference no. EdelARC/1208/2018-19 dated July 10, 2018 seeking payment of an amount of INR. 265,02,50,181.47 (Rupees Two Hundred and Sixty Five Crores Two Lakh Fifty Thousand One Hundred and Eighty One and Forty Seven Paise Only) (as on February 28, 2017) together with interest, further interest, default interest and other monies</p>

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thereon with effect from March 01, 2017 at the given contractual rates upon footing of compound interest until payment.

A sanction letter with reference no. ECLF/PF/310 dated October 04, 2013 was issued by ECL Finance Limited for sanctioning Rs. 170.0 crores (Rupees One Hundred and Seventy Crores Only) and the said sanction letter was duly acknowledged and accepted by the Era Landmarks Limited (now known as Adel Landmarks Limited) on October 07, 2013. Further, in order to give effect to the aforesaid sanction, a Loan Agreement dated October 07, 2013, was executed between ECL Finance Limited (as lender), Era Landmarks Limited (as Borrower), whereby the lender agreed to lend and advance Rs. 170.0 crores (Rupees One Hundred and Seventy Crores Only) to the Borrower/Adel Landmarks Limited (formerly known as Era Landmarks Limited) on the terms and conditions mentioned in the said Loan Agreement.

A copy of the Sanction letter dated October 04, 2013 is enclosed herewith as **Annexure-5**. A copy of the Loan Agreement dated October 07, 2013 is

enclosed herewith as **Annexure 6.**

The following are the details of the disbursement of the amounts to Era Landmarks Limited in terms of the Loan Agreement dated October 07, 2013:

LOAN ACCOUNT NO.:	
CL/FRG/WH00074/B1.197	
<u>DATE OF DISBURSEMENT</u>	<u>AMOUNTS DISBURSED (IN RS.)</u>
<u>21.10.2013</u>	<u>54,31,00,000/-</u>
<u>22.10.2013</u>	<u>2,40,000/-</u>
<u>23.10.2013</u>	<u>11,23,000/-</u>
<u>29.10.2013</u>	<u>106,77,00,000/-</u>
<u>30.10.2013</u>	<u>51,60,000/-</u>
<u>07.11.2013</u>	<u>2,00,00,000/-</u>
<u>30.11.2013</u>	<u>2,75,26,500/-</u>
<u>31.12.2013</u>	<u>2,90,10,000/-</u>
<u>07.04.2014</u>	<u>20,00,000/-</u>

The Debt as mentioned above along with all the rights, title and interest in the underlying securities and guarantees including the corporate guarantee of the Corporate Debtor have been assigned by the Lender to the Financial Creditor pursuant to Assignment Agreement dated March 23, 2017 executed between ECL Finance Limited (being the Assignor) and Financial Creditor (being the Assignee), duly registered on July 13, 2017 with the registration number 4496/2017 in the Office of

		<p>Sub-Registrar -II at Noida, Uttar Pradesh.</p> <p>A copy of the Assignment Agreement dated March 23, 2017 is enclosed herewith as <u>Annexure 7.</u></p> <p>The Corporate Debtor has executed a Guarantee Agreement dated October 07, 2013 in favour of ECL Finance Limited (as lender) for securing the entire dues of the under the Loan Agreement dated October 07, 2013.</p> <p>A copy of the Guarantee Agreement dated October 07, 2013 is enclosed herewith as <u>Annexure -8.</u></p>
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The aforesaid details would show that the loan facilities were extended to the Corporate Debtor to the extent shown in the aforesaid tables as stated in the petition itself.

6. In column 2 of part IV the amount claimed to be in default and the date on which the default had occurred, have been mentioned. According to the averments made by the Financial Creditor-Edelweiss Asset Reconstruction Company Limited the aforesaid facilities availed by the Corporate Debtor are overdue and total amount in default as on 31.07.2018 is Rs.



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382,40,80,075/- (Rupees Three Hundred Eighty Two Crores Forty Lakhs Eighty Thousand Seventy Five Only).

7. The 'financial creditor' has placed on record overwhelming documentary evidence which highlight the particulars of debt and evidence to prove the default. The details of the security interest have been given in Part V which are set out below:-

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)		
S. NO.	NAME AND DATE OF THE DOCUMENT EXECUTED	DESCRIPTION OF THE SECURTIES
1	Declaration and Undertaking-from Mansarovar Heritage Inn Private Limited ("Mortgagor") dated October 12,2013 along with Form 8.	First charge over the following immovable property: All those piece and parcel of land admeasuring 23176.83 Square Yards situate at Village Sodawala (Khasra No. 320,321,322), Sushilpura (Khasra No. 313 min), Tehsil and District Jaipur in the state of Rajasthan, as described in lease deed dated 07.11.2002 registered as document number

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			9568 in Book No. I volume No. 362 at page no. 68 dated 08.11.2002 in the office of Sub-Registrar Assurance Registration & Stamp, Jaipur (first), 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.
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8. The 'financial creditor' has then attached a list of other documents to the application to prove the financial debt, the total amount due and the date of default. Those documents are as under:-

- a. A certified true copy of the resolution passed in the meeting of Board of Directors of Mansarovar Heritage Inn Private Limited held on October 07, 2013 for the purpose of executing guarantee agreement and other deeds and documents in respect of Loan of Rs. 170.0 Crores availed by Era Landmarks Limited from ECL Landmarks Limited;
- b. A copy of Independent Auditor Report on Financial Statement Annual Reports of the Corporate Debtor (including balance sheet, statement of profit and loss and cash flow statement) as on March 31, 2017 issued by Sandeep Ramniwas Gupta & Co. (Chartered Accountant



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having Firm Registration No. 006406C) dated 30.09.2017 duly acknowledged by Mr. Kapil Kumar, Director, of the Corporate Debtor (DIN: 07345883) and Mr. Yogesh Kumar Aggarwal Sandeep, Director of the Corporate Debtor (DIN:03024131) showing admitted debt owed to the Financial Creditor (as available with the Financial Creditor);

- c. A copy of loan Recall Notice with reference no. EdelARC/1128/2018-19 dated 02.07.2018 issued by Edelweiss Asset Reconstruction Company Limited (Financial Creditor) to Adel Landmarks Projects Limited for recalling the outstanding loan amount and demanding the payments of Rs. 265,02,50181.47 (Rupees Two Hundred and Sixty Five Crores Two Lakh Fifty Thousand One Hundred Eighty One and Forty Seven Paisa Only) as on February 28, 2017 within seven days from the date of this notice together with interest, further interest, default interest and other charges thereon from 01.03.2017 till payment/realization in full and redeem the pledge and other securities;
- d. A copy of notice for Invocation of Corporate Guarantee with reference no. EdelARC/1208/2018-19 dated 10.07.2018 issued by Financial Creditor to Mansarovar Heritage Inn Pvt. Ltd. (Corporate Debtor) and other corporate guarantors demanding the payments for a sum of Rs. Rs. 265,02,50181.47 (Rupees Two Hundred and Sixty Five Crores Two Lakh Fifty Thousand One Hundred Eighty One and Forty Seven Paisa Only) as on February 28, 2017 within seven days from the date of this notice together with interest, further interest, default interest and other charges thereon from 01.03.2017;



- e. A copy of latest Form CHG-I and MCA Certificate for registration of modification of charge in relation to the charges created over the assets of the Adel Landmarks Limited and other security providers including the Corporate Debtor i.e. charge modification date 23.03.2017 and MCA Certificate for registering modification and assigning Charge Identification No. 10483420 dated 20.11.2017; Annexure -12(Colly).

Copies of the abovementioned documents have been placed on record [Annexure-12 (Colly)].

9. The copies of the loan agreement dated October 07, 2013 executed between ECL Finance Limited (as lender) Era Landmarks Limited (now known as Adel Landmarks Limited) (as Borrower), guarantee Agreement dated October 07,2013 executed by Corporate Debtor in favour of ECL Finance Limited and declaration & undertaking by an authorized director of the Corporate Debtor ("Mortgagor") dated October 12, 2013 along with Form 8 have been placed on record [Annexure-6, 8 & 10 (Colly)].

10. Entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 pertaining to the debt supported by certificate under Section 65B of the Indian Evidence Act, 1972 has also been placed on record [Annexure-11 (Colly)].

11. Learned counsel for the Corporate Debtor has opposed the admission of the application and has advanced the following arguments: -

- (i) The application is replete with factual and technical defects which renders the application incomplete.
- (ii) A perusal of the purported Resolution dated 11.05.2018 (Annexure 1 at pgs. 22-24) reveals that the same is infact 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. Further, there is a lack of material evidence regarding the legal formation and made of the said Operations Committee which casts serious aspersions on its genuineness.
- (iii) The affidavit supporting the written communication furnished by the proposed Interim Resolution Professional, Mr. Darshan Singh Anand is defective as the affidavit has been notarized by the aforesaid Interim Resolution Professional on 20.09.2018 whereas the same mentions date of verification as 07.09.2018. Moreover, the said Written Communication is undated.

- (iv) The application is not complete as per the requirement of Rule 34 of National Company Law Tribunal Rules, 2016 as Notice of Admission is not given along with the application. The first page of Form-I at pg.6 is undated and this is clear violation of the Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- (v) The applicant has not provided a date of default in Part-IV of the Form-1 of the application.
- (vi) The present application has been filed in contravention of various provisions of the Notification dated 12.02.2018 issued by the Reserve Bank of India particularly clause 2 which states that a loan account has to be classified as a Special Mention Account ('SMA') as SMA-0, SMA-1 or SMA-2 immediately upon default.
- (vii) The application has been filed in complete contravention of clause 4 of the aforesaid notification dated 12.02.2018, which casts a mandatory obligation on the Lender to take the initiative to settle/cure the



default of the borrower before approaching this Tribunal. The clause 4 reads as under:

“B. Implementation of Resolution Plan

4. All lenders must put in place Board-approved policies for resolution of stressed assets under this framework, including the timelines for resolution. As soon as there is a default in the borrower entity’s account with any lender, all lenders – singly or jointly – shall initiate steps to cure the default. The resolution plan (RP) may involve any actions / plans/reorganization including, but not limited to, regularisation of the account by payment of all over dues by the borrower entity, sale of the exposures to other entities / investors, change in ownership, or restructuring. The RP shall be clearly documented by all the lenders (even if there is no change in any terms and conditions).


(viii) In light of clause 12 of the aforesaid notification the reference date(s) and timelines for Resolution of Stressed Loan Accounts between 1-20 Billion, i.e., Rs. 1,00,00,000/- (Rupees One Crores Only) to Rs. 2000,00,00,000/- (Rupees Two Thousand Crores Only) have not yet been prescribed, the same cannot be interpreted to absolve the Financial Creditor being a



Lender from complying with Clause 4 as referred in preceding para. The clause 4 reads as under:

For other accounts with aggregate exposure of the lenders below ₹ 20 billion and, at or above ₹ 1 billion, the Reserve Bank intends to announce, over a two-year period, reference dates for implementing the RP to ensure calibrated, time-bound resolution of all such accounts in default.

- (ix) The total amount of Rs. 382,40,80,075/- (Rupees Three Hundred Eighty Two Crores Forty Lacs Eighty Thousand Seventy Five Only) stated to be in default at page No. 13 is grossly inflated, and the Financial Creditor has been unable to substantiate the same. In fact, the Financial Creditor has been charging exorbitant rates of interest, increasing the same from time to time unreasonably.
- (x) The Corporate Debtor always had the bonafide intention to repay the entire outstanding debt, and in fact made every attempt to service the said debt in a timely manner. However, it was due to the arbitrary action of the Financial Creditor and other contingencies as highlighted above beyond the control of the Corporate

 Debtor that there was default in repayment.

12. Having heard learned counsel for the parties we are of the considered view that the Financial Creditor has succeeded to make out a case for triggering the Corporate Insolvency Resolution Process.

13. The first question which arise for consideration is whether the Financial Creditor-Lender is entitled to invoke the provisions of Section 7 of the Code against the guarantor, Mansarovar Heritage Inn Private Limited who is the guarantor for the loan disbursed to Adel Landmarks Limited (formerly known as Era Landmarks Limited). In that regard the guarantee agreement dated 07.10.2013 which continues to govern the rights of the parties need to be taken into consideration (Annexure A-8). A perusal of various clauses of the agreement clearly shows that the guarantee is enforceable against the guarantor notwithstanding that any security or securities comprised in any instrument(s) executed by the borrower in favour of the Financial Creditor-Petitioner-Lender would be considered outstanding at the time when the proceedings are taken against the guarantor on the basis of the guarantee (see clause 9). Likewise, clause 16 has clarified that the petitioner-Financial Creditor-Lender who is a guarantor may act as the



principal debtor to the lender. Both these clauses are set out below:

“9. This Guarantee shall be enforceable against the Guarantor(s) notwithstanding that any security or securities comprised in any instrument(s) executed or to be executed by the Borrower in favour of the Lender shall, at the time when the proceedings are taken against the Guarantor(s) on this Guarantee, be outstanding or unrealised or lost.

10.

11.

12.

13.

14.

15.

16. To give effect to this Guarantee, the Lender may act as though the Guarantors were the principal debtors to the Lender.”

14. The arrangement is squarely covered by the provisions of Section 126 & 127 of the Contract Act, 1872. It is also pertinent to mention that the liability of guarantor (surety) is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. It is obvious that Section 128 of the Contract Act has created a space and granted liberty to the parties to incorporate provisions if the liability of the guarantor is not to be co-extensive with that of the principal debtor. In other words by agreement the

parties may provide that the liability of the guarantor would commence only if the principal debtor has failed to repay. However, in the present case clauses 9 & 16 of the guarantee agreement makes it patent that the guarantor namely Mansarovar Heritage Inn Private Limited-Corporate Debtor would be treated like the principal debtor. Therefore, any argument to the contrary on behalf of the Corporate Debtor claiming that it is not a Corporate Debtor within the meaning of Section 3 (8) of the Code would be wholly unacceptable because by the agreement of the parties the guarantor like Respondent is to be treated like a principal borrower.

15. In any case learned counsel has rightly submitted that the liability of the Principal Borrower and the Guarantor is co-extensive and that the Beneficiary of a Guarantee is not required to exhaust its remedies against the Principal borrower before proceeding against the guarantors. In this regard reliance has been placed on a judgment rendered by Hon'ble the Supreme Court in the case of **Bank of Bihar v. Damodar Prasad**, AIR 1969 SC 297 (para 3-5), **Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala**, 2009 (9) SCC 478 (para 22-24) and **State Bank of India v. Indexport Registered & Ors.**,

1992 (3) SCC 159 (para 13-18). Reliance has also been placed on a judgment rendered by this Tribunal in the case of **ICICI Bank v. C.A. Ritu Rastogi** dated 23.01.2018 where aforesaid principles have been followed and applied.

16. Thus it is no longer res-integra that liability of surety is co-extensive with the principal debtor. The surety, thus, becomes liable to pay the entire guaranteed outstanding loan amount. As the financial debt in question remained unpaid, the guarantee was duly invoked and the outstanding loan amount was recalled. Guarantee deed is an independent contract with the object to secure the debt of the creditor and in all fairness has to be honoured to fulfil the contractual obligation undertaken by the respondent-Corporate Debtor. The material on record clearly goes to show that respondent is the guarantor and has committed default in repayment of the financial debt even after demand made by the petitioner-financial creditor. The respondent-corporate guarantor cannot avoid Corporate Insolvency Resolution Process when it has defaulted to repay the debt, despite invocation of guarantee by petitioner-financial creditor.

17. Moreover, requirements of Section 7 (2) and Section 7 (5) of the Code stand satisfied. The Adjudicating Authority-NCLT has to record a finding to that effect. It would therefore be appropriate to 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)

18. We have already recorded a finding that in law respondent must be treated as Corporate Debtor within the meaning of Section 3 (8) of the Code. It is then provided by Section 7(2) & (5) of the Code that the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred within the meaning of Section 4 of the Code and the application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional. The application warrants admission. Thus, the petition is complete in all respects.

19. The objection raised by the Corporate Debtor is that the applicant has failed to quantify the total amount of default at Page



13 under Part-IV of the Form-1. In this regard it would be profitable to take notice of para 30 of the judgment of Hon'ble the Supreme Court rendered in the case of **M/s. Innoventive Industries Limited v. ICICI Bank & Anr.**, Civil Appeal No. 8337-8338 of 2017 decided on 31.08.2017 wherein it has been held that
“.....in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

In light of the aforesaid observations the scope of enquiry in these summary proceedings before the Adjudicating Authority is limited to evaluate records provided by the Financial Creditor to satisfy itself that the financial debt was disbursed and that the default has occurred. In order to ascertain whether the default has occurred, it will be profitable to read Section 3 (12) of the Code which states that default means non-payment of debt when whole or any part of the instalment of the debt has become due & payable and the same has not been repaid by the ‘Corporate

Debtor'. The Financial Creditor has specified the details of sanctioned facility mentioned in the application along with other crucial documents. In the present case, it has come on record predominantly that the 'default' has occurred many a times.

20. Another argument of the Corporate Debtor is that it always had the bonafide intention to repay the entire outstanding debt, and infact made every attempt to service the said debt in a timely manner. The argument does not need to detain us because merely expression of good intention to pay the outstanding amounts without any substantial proposal from any of the strategic investor or otherwise would not cut any ice. How and in which manner same would be cleared and if the said intention is based on so many 'ifs and buts' then the Financial Creditor cannot be compelled to accept the terms of proposal. Even otherwise such a proposal must be the result of free volition. A due diligence is proposed to be conducted in such type of cases and till date there is no concrete proposal in place. However, if the Corporate Debtor is confident about the investment from the strategic investor or otherwise, the same could be examined by the Committee of Creditors of the Corporate Debtor along with Interim Resolution Professional after admission of the present petition. Even this

petition could be withdrawn after admission if requirement of amended provisions of the Code are fulfilled.

Further such type of objection raised by the 'Corporate Debtor' has been noticed to highlight their wish. However, the fact remains that till date substantial outstanding amount in default is payable by the 'Corporate Debtor'. Therefore, this objection too would not require any serious consideration.

21. Learned counsel for the petitioner has highlighted para 2 of the preliminary submissions of the reply submitted by the respondent and argued that the respondent has admitted that Adel Landmarks Limited being a group company of the Corporate Debtor availed credit facilities from ECL Finance Limited under Loan Agreement dated 07.09.2013 for a total sanctioned amount of Rs. 170/- crores and the said facility was secured with the corporate guarantee of the Corporate Debtor through Guarantee Agreement dated 07.09.2013. Default in repayment of its dues by the Adel Landmarks Limited was further admitted in the said para. In light of such admission of the Corporate Debtor it is crystal clear that loan was taken by the group company of the Corporate Debtor and default has also occurred.

22. As a sequel to the above discussion, this petition is admitted and Shri Darshan Singh Anand, EG-46, InderPuri, New Delhi-110012, email id – darshan_singh@sumedhamanagement. com, Mobile No. 74996-80526, Registration No. IBBI/IPA-002/IP-N00326/2017-18/10931 is appointed as an Interim Resolution Professional.

23. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. 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;



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- (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.”

25. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor 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 services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Darshan Singh Anand to meet out the expenses to perform the functions



assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

27. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, 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 committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/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/Resolution Professional shall be under a 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.

28. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

-Sd-

(M.M.KUMAR)
PRESIDENT

30.01.2019

-Sd-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

30.01.2019
(VINEET)