

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, NEW DELHI

C.P. NO.IB-1040(PB)/2018

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

Edelweiss Finvest Private LimitedPetitioner(s)

Vs.

Rational Buildcon Pvt LtdRespondent

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

Order delivered on: 05.12.2018

Coram:

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

Ms. INA MALHOTRA
Hon'ble Member (Judicial)

PRESENTS:

For Petitioner : Mr. Atul Sharma, Mr. Kamal Gupta,
Ms Yamini Khanna, Advs.

For Respondent :Ms. Manisha Chaudhary, Mr. Mansumer
Singh, Mr. Himanshu Handa, Advs.

ORDER

M.M.KUMAR, PRESIDENT

The Petitioner(s) claiming to be financial creditors
have 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 Rational Buildcon 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.

2. The Corporate Debtor – Rational Buildcon Pvt Ltd was incorporated on 03.02.2007 under the provisions of the Companies Act. The identification number of the Corporate Debtor given is CIN U45200DL2007PTC158738.
3. It is submitted by the Petitioner that ECL Finance Ltd had sanctioned a Loan Facility amounting Rs. 110 Crore (Debt I) vide Loan Agreement dated 07.02.2014 (**Annexure 8**) and Rs. 65 Crore (Debt II) vide Loan Agreement dated 22.01.2015 (**Annexure 11**) to the Corporate debtor. ECL Finance Limited vide an Assignment Agreement dated 12.02.2018 (**Annexure 15**) had assigned the debt to Edelweiss Asset Reconstruction Company Ltd & Edelweiss Finvest Pvt. Further, a rupee term

loan facility of Rs. 30 Crore (Debt III) was sanctioned by Arum Investments Private Limited (now known as Edelweiss Finvest Pvt Ltd) vide Loan Agreement dated 25.03.2016 (**Annexure 14**) to the Corporate Debtor.

4. The precise case of the Petitioners is that the total amount in default due to the financial creditor by the corporate debtor as on 31.07.2018 is Rs. 179,00,28,312/- (Debt I), Rs. 98,95,43,344/- (Debt II) and 38,95,52,165/- (Debt III).
5. The Financial Creditor has proposed the name of Mr. Udayraj Patwardhan as the Insolvency Professional with the address C-703, Marathon innova, Off Ganapatrao Kadam Marg, Lower Parel (West), Mumbai - 400013 and E-mail-id - udayraj_patwardhan@sumedhamanagement.com. His registration number is IBBI/IPA-001/IP-N00024/2016-17/10057. 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 (**Annexure -5(Colly)**).



6. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the Application the Financial Creditor has mentioned the amount claimed in default and the date of the default (the details have been stated in Para 4).
7. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate that Loan disbursed and the amount claimed to be in default.
8. A reply to the petition is filed by one Mr. Arun Singh, being the Authorized signatory of the Respondent- Corporate Debtor, who has been given authority vide Board Resolution dated 20.08.2018 and also a Rejoinder to the Reply has been filed by the Petitioner-Financial Creditor on 18.09.2018.
9. In the Reply the Respondent-Corporate Debtor has admitted the disbursement of Loan for Debt-I, Debt-II and Debt-III. The Corporate Debtor further admits that it has defaulted in paying the monthly instalments owing to certain contingencies.



10. One of the preliminary objections raised by the Respondent-Corporate Debtor is that the present Petition has been filed under improper authorization and the amount claimed is exaggerated.

However the assertions have been controverted. The Financial Creditor-Petitioner has attached a copy of the Board Resolution (**Annexure A(Colly)**) authorizing Ms. Perna Aggarwal and Mr. Kulbir Singh Rana to file the present petition. It is also averred by the Petitioner that the amount claimed is based on the terms of the Loan Agreement and it is calculated in a transparent manner.

11. The Respondent-Corporate Debtor admits the disbursement of loan and further states that the contents of Part-IV of the Petition are not denied to the extent that the same are a matter of record. It has been candidly admitted by Ms Manisha Chaudhary and there was no resistance to the admission of the petition.



12. 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 which support those findings.

13. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled.

14. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in the Order dated 27.11.2018 in IB- 1039(PB)/2018 are complied with.

15. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, 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.

16. As a sequel to the above discussion, this petition is admitted and Mr. Udayraj Patwardhan is appointed as the Interim Resolution Professional (Details stated in para 5).

17. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.

18. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to 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.



19. 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.

- Sd -

(M.M.KUMAR)
PRESIDENT

- Sd -

(INA MALTHOTRA)
MEMBER (JUDICIAL)

05.12.2018
(VIDYA)