

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (I&B) 1799/NCLT/MB/MAH/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Edelweiss Asset Reconstruction Co. Ltd.

...Financial Creditor/ Petitioner

v/s

Sejal Glass Ltd.

...Corporate Debtor

Order dated 13.02.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Ms. Suchitra Valjee, Advocate , Prerana Wagh,
Advocate

For the Respondent: Mr. Akshay Puranik, Advocate ,Ms.Henna
Daulat and Ms Anaisha Zachariah, Advocate

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) by Edelweiss Asset Reconstruction Co. Limited, Financial Creditor or Petitioner against Sejal Glass Ltd. (earlier known as Sejal Glass Limited), Corporate Debtor to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the ground that as on 10.05.2018, the Corporate Debtor has defaulted in repaying the debt amount i.e. ₹40,49,72,485/-. The date of default in repayment of the debt by the Corporate Debtor as stated by the petitioner is 13.10.2016.

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2. The Petitioner, as Trustee of the Edelweiss Asset Reconstruction Company Trust SC-42, entered into an assignment agreement with State Bank of Patiala on 26.06.2014, wherein it got assigned the impugned loans disbursed by the assignor to the Corporate Debtor. The said assignment agreement is annexed with the petition.
3. The State Bank of Patiala had granted the following loan facilities to the Corporate Debtor:
 - a. Term Loan-1 of ₹7,20,00,000/- vide agreement dated 04.08.2011,
 - b. Cash Credit of ₹10,00,00,000/- vide agreement dated 14.12.2011,
 - c. Letter of Credit of ₹7,00,00,000/-, vide agreement dated 14.12.2011, and
 - d. Bank Guarantee of ₹5,00,00,000/-, vide agreement dated 14.12.2011.

It is stated that the Letter of Credit and Bank Guarantee were later converted to Term Loan-2.
4. The said loan facilities were secured, among other things, by a mortgage, hypothecation and personal guarantee.
5. The Petitioner has annexed to the Petition a copy of Memorandum of Entry dated 04.08.2011, Memorandum of Entry dated 11.12.2011, Letter confirming Deposit of Title Deeds dated 05.08.2011, Agreement of Hypothecation of Goods dated 04.08.2011, Agreement of Hypothecation of Goods dated 14.12.2011, Deed of Guarantee executed by Shri Kanji Valji Gada, Shri Amrut Shavjibhai Gada, Shri Shhanttibhai Shavjjibhai Gada, Shri Dhiraj Shavjjibhai Gada, Shri Mitesh Kanji Gada dated 04.08.2011, Deed of Guarantee executed by Shri Kanji Valji Gada, Shri Amrut Shavjibhai Gada, Shri Shhanttibhai Shavjjibhai Gada, Shri Dhiraj Shavjjibhai Gada, Shri Mitesh Kanji Gada dated

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14.12.2011, Agreement for Grant of Credit Facility dated 04.08.2011, letter regarding Grant of Individual limit within Overall limit dated 04.08.2011, Sanction Letter dated 12.12.2011, Agreement for Grant of Credit Facility dated 14.12.2011, letter regarding Grant of Individual limit within Overall limit dated 14.12.2011, Renewed Sanction Letter dated 16.02.2013 to show the existence of debt. The Petitioner, with its written submissions, has produced Form CHG-1 along with Certificate of Registration for Modification of Charge dated 26.02.2015.

6. The Petitioner in its letter dated 08.01.2016, addressed to the Corporate Debtor, has stated the fact that the State Bank of Patiala has assigned the debt to the Petitioner vide the Assignment Agreement dated 26.06.2014 and that the Petitioner agrees to restructure the Existing Liability as per the terms and conditions mentioned therein. The said restructuring along with all terms and conditions was accepted by the Corporate Debtor and the Letter dated 08.01.2016 was signed by Mr Amrut S. Gada, Chairman & Managing Director of the Corporate Debtor. The terms of the Restructuring provided, among other things, that the crystallised amount is of ₹26,00,00,000/- and on revocation of restructuring, the entire amount of existing liability shall become due and payable to the Petitioner.
7. The said restructuring was revoked by the Petitioner vide its letter dated 13.10.2016 due to default by the Corporate Debtor in repayment as per the terms of restructuring. The Petitioner has annexed with the petition the restructuring Letter dated 08.01.2016 and the Letter of Revocation of Restructuring dated 13.10.2016.
8. The Petitioner has annexed a letter of the Corporate Debtor, dated 14.05.2016, stating that the account of the Petitioner in the Books maintained by the Corporate Debtor has a credit

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balance of ₹26,81,14,141/- as on 31.03.2016 and the same is acknowledged by the Petitioner.

9. The Petitioner has also annexed the Affidavit in Reply dated 06.02.2018 filed on behalf of the Sejal Glass Limited, in Company Petition No. 943 of 2014 in the High Court of Judicature at Bombay. In the said reply the Corporate Debtor has admitted that it had availed the loan facilities and also acknowledged the assignment of the same to the Petitioner.
10. The Petitioner has also annexed the Standalone Financial Statements for the period 01.04.2016 to 31.03.2017 wherein it is stated that *"The Company had defaulted in repayment of Principal and Interest on Term Loan and Interest on Cash Credit facility during FY 2013-14.....State Bank of Patiala(SBP) had assigned the outstanding amount of the credit facility as on 12th June 2014 to Edelweiss Asset Reconstruction Company Limited (EARC)..."*
11. The Petitioner has annexed the Commercial Credit Information Report of the Corporate Debtor as has been collated by TransUnion CIBIL Limited dated 12.04.2018.
12. The Petitioner has annexed the Bank statements of the Corporate Debtor along with Certificate as per the provisions of Bankers Book of Evidence Act, 1891 showing the disbursement of debt.
13. The Petitioner has also annexed the notice dated 27.01.2014 sent by the State Bank of Patiala under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 demanding repayment of ₹22,71,08,937.35/- as the same being outstanding on 17.01.2014.
14. As per the computation of dues attached with the Petition, the default under the Term Loan 1 stands at ₹5,56,39,881/-, Term

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Loan 2 stands at ₹1,62,85,037/- and under Cash Credit Facility at ₹33,30,47,567/- as on 10.05.2018.

15. The Corporate Debtor in its defence has broadly raised two objections; one is about the application under section 7 of I&B Code being incomplete and another on the fact that the three agreements upon which the Petitioner relies to establish debt, are insufficiently stamped .
16. The Corporate Debtor has stated that the Petitioner has wrongfully and incorrectly submitted copies of Certificate of Registration of Charge about unconnected loans that have already been repaid by the Corporate Debtor. It is contended that since the filing of Certificate of Charge is a mandatory requirement under Form-I of I&B Rules, the application, as filed by the Petitioner, under section 7 of I&B Code is incomplete.
17. With respect to the second defence, the Corporate Debtor has argued that the Agreement for Grant of Credit Facility dated 04.08.2011; Agreement for Grant of Credit Facility dated 14.12.2011 and the assignment agreement dated 13.09.2014 are insufficiently stamped and hence are not admissible in evidence and are liable to be impounded under the provisions of Maharashtra Stamp Act, 1958. The Corporate Debtor has relied upon section 19, 33, 34 and 37 of the Stamp Act and the judgment of the Hon'ble Supreme Court in **SMS Tea Estates Pvt. Ltd. vs Chandmari Tea Company Pvt.**, (2011) 14 SCC 66 and the judgment of Hon'ble Bombay High court in Asset Reconstruction Company (India) Ltd. vs Alpha and Omega Diagnostics (India) Ltd. and Ors.
18. The Corporate Debtor has further relied upon the judgment of the Hon'ble Supreme Court in **Innoventive Industries Ltd. vs ICICI Bank**, (2018) 1 SCC 407 to state that the Petitioner cannot proceed to recover the debt from the Corporate Debtor on account of the inadequately stamped instruments and thus the

present Petition cannot be admitted without first impounding the said agreements.

19. With respect to the reliance placed by the Petitioner upon the judgment of Hon'ble NCLAT in Lalan Kumar Singh vs M/s Pheonix ARC Pvt. Ltd. dated 20.12.2018 in Company Appeal (AT)(Insolvency) No. 485 of 2018, the Corporate Debtor has submitted that the judgment is not applicable in the present facts and circumstances as the respondent has not raised a contention that the Assignment Agreement is illegal, but that it cannot be acted upon due to it being not duly stamped.
20. We have heard the arguments of both sides and perused the record. Allegedly, in this case, the Petitioner was assigned the loans granted by the State Bank of Patiala vide the Assignment Agreement Dt.26.06.2014. The present Petition is filed by Ms Aayushi Chaudhary, Law Associate of the Petitioner Company, duly authorised to initiate proceedings under IBC, vide resolution passed in the Operations Committee meeting Dt.07.03.2018. The Petitioner has submitted the requisite fee along with the Petition as evidenced by the supporting document with the Petition.
21. The Petitioner has annexed a statement showing the calculation for an amount of ₹40,49,72,485/- claimed to be in default as on 10.05.2018. The Petitioner has also annexed the updated documents evidencing the sanction of the financial debt and supporting instruments evidencing the creation of security for the same debt.
22. The Corporate Debtor has itself acknowledged in its letter dated 14.05.2016, stating that the account of the Petitioner in the Books maintained by the Corporate Debtor has a credit balance of ₹26,81,14,141/- as on 31.03.2016. The said letter is addressed to the Petitioner.

23. The Petitioner has also annexed the Bank statement of the Corporate Debtor, along with the Certificate as per the provisions of Bankers Book of Evidence Act, 1891 showing the disbursement of debt and the unpaid balance in the account.
24. The Corporate Debtor has not contended that the debt does not exist or the default has not occurred. The Corporate Debtor has only raised technical defences as to incomplete Form-1 and the validity of documents being not duly stamped.
25. As to the objections raised by the Corporate Debtor regarding the Certificate of registration of Charge, the Petitioner has submitted with its written submissions Form CHG-1 along with Certificate of Registration for Modification of Charge dated 26.02.2015. Therefore, the said objection is not sustainable.
26. With regard to the other objection on the agreements being not duly stamped, it is noted that the Corporate Debtor itself has repeatedly relied and acted upon the said agreements viz. in its Affidavit in Reply dated 06.02.2018 filed on behalf of the Sejal Glass Limited, in Company Petition No. 943 of 2014 in the High Court of Judicature at Bombay and again in its Standalone Financial Statements for the period 01.04.2016 to 31.03.2017.
27. Therefore, even if the agreements, as alleged, are not admissible as an evidence of debt and default, there are several other documents that show the admission by the Corporate Debtor of the debt that it owes to the Petitioner viz. its letter dated 14.05.2016 and its Affidavit in reply dated 06.02.2018 filed in the Hon'ble Bombay High Court.
28. By the above discussion, we are of the considered view that the respondent's contentions raised in the Affidavit in reply are unsustainable. The existence of debt is clear from the Letter of the Corporate Debtor, its affidavit in reply filed in Hon'ble Bombay High Court, loan agreements, various documents

relating mortgage deed, hypothecation deed, certificate of creation of charge and personal guarantee agreements.

29. The Petitioner has proved the existence of debt as well as the default.
30. The Petitioner has proposed the name of Shri Rajendra Kumar Girdhar, Registration Number [IBBI/IPA-003/IP-N00048/2017-18/10396] as Interim Resolution Professional, to carry out the functions as mentioned under IBC, and given his declaration, no disciplinary proceedings are pending against him.
31. The Application under sub-section (2) of Section 7 of IBC, 2016 is complete. The existing debt of more than one Rs lac against the corporate debtor and its default is also proved. Accordingly, the petition filed U/S 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of IBC, 2016, against the Corporate Debtor for initiating corporate insolvency resolution process is at this moment admitted. We further declare moratorium u/s 14 of IBC with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from 13.02.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for the liquidation of the corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench at this moment appoints Shri Rajendra Kumar Girdhar, Registration Number [IBBI/IPA-003/IP-N00048/2017-18/10396] as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

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32. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

13th February, 2019

Sd/-

V.P. SINGH
Member (Judicial)