



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
C.P. (IB)/104(AHM)2024

Orders under Section 7 IBC

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited
V/s
Takshashila Heights Private Limited

.....Applicant

.....Respondent

Order delivered on: 06/11/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

CP(IB) No. 104 of 2024

(Filed under Section 7 of the IBC, 2016 r.w Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd.
Acting in its capacity as a Trustee of EARC
Trust, SC 444, a company incorporated under
the Companies Act, 1956 and registered as an Asset
Reconstruction of Financial Assets and Enforcement of
Security Interest Act, 2002, having its registered office
At Edelweiss House, Off C.S.T. Road, Kalina,
Mumbai-400098.
Through its authorized Signatory
Ms. Dolly Bharti, Assistant Manager
(Authorized through Board Resolution dated 24.01.204)

... Financial Creditor

V/s

Takshashila Heights India Pvt. Ltd.
Having registered office at
560, Silver Arc 'B', Open Plot,
Nr. Ashima House, Town Hall,
Madalpur, Ellisbridge
Ahmedabad
Gujarat-380006

... Respondent

Order pronounced on 06.11.2024



Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Rasesh Sanjanwala, Sr. Adv. a.w Mr.
Hem Buch, Adv. & Mr. Harshvardhan
Rathore, Adv.
For the Respondent : Mr. Kiran Shah, FCA a.w Mr. Dhruvit
Shah, Adv.

JUDGEMENT

1. This Application is filed by Edelweiss Asset Reconstruction Company Ltd under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as a Financial Creditor for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Takshashila Heights India Pvt. Ltd. (for brevity 'Corporate Debtor').
2. The applicant Financial Creditor is a company incorporated under the Companies Act, 2013 and registered as Asset Reconstruction Company under SARFAESI Act. One ECL Finance Ltd. (hereinafter referred to as original lender) had



sanctioned financial assistance to the CD vide assignment agreement dated 09.05.2022, original lender assigned all its right, title, interest in the financial documents, all agreements related to the repayment of loan in favour of the applicant. By virtue of said agreement, applicant has stepped into the shoes of original lender and is entitled to take steps against the Corporate Debtor for recovery of dues. The CD and erstwhile Neelkamal Realtors and Complex Pvt. Ltd. have mortgaged their immovable property to secure financial assistance granted by the original lenders. From 31.10.2020, the scheme of amalgamation has become effective as the RD, Ahmedabad confirmed the scheme of amalgamation. In view of the scheme, CD became beneficiary of liabilities. The charge on the property of erstwhile Neelkamal Realtors and Complex Pvt. Ltd. are enforceable on the property of the Corporate Debtor.

3. The applicant further submitted that as per request of CD, original lender sanctioned Term Loan (hereinafter referred to Term Loan Facility-I) of Rs. 40 crore on 19.07.2018. The Corporate Debtor executed loan agreement undertaking cum indemnity. So also personal guarantees were executed



by Mr. Kamlesh Gondalia, Mrs. Deeptiben Gondalia and Mr. Parthil Gondalia. They have also executed hypothecation deed. An Escrow account was to be opened at HDFC Bank.

4. The original lenders further sanctioned Term Loan of Rs. 30 crore on 19.7.2018 (hereinafter referred to as Term Loan Facility-II). For this facility, the Corporate Debtor executed loan agreement-II. The Corporate Debtor as well as guarantors have executed relevant documents for loan agreement deed. With respect to Term Loan-I & Term Loan-II, the Corporate Debtor and erstwhile Neelkamal Realtors and Complex Pvt. Ltd. executed indenture of mortgage on 04.09.2020 in favour of original lenders. The Corporate Debtor and erstwhile Neelkamal Realtors and Complex Pvt. Ltd. agreed that all the ECL project receivable shall be routed through Escrow account and shall be distributed in terms of the transaction documents. The original lender appointed Axis Bank Ltd. to open Bank accounts and hold ECL projects receivable arising out of their project and release Escrow money upon happening of event as per Escrow agreement dated 07.09.2020.



5. The applicant further stated that operation and conduct of the aforesaid facilities granted became irregular and the Corporate Debtor started committing default in repaying the loan. The last payment was made on 30.09.2021. The account was classified as NPA on 30.12.2021. The Financial Creditor also issued recall notice dated 31.05.2022 to Corporate Debtor demanding outstanding dues but the Corporate Debtor failed and neglected to comply the same. As on 31.01.2024, sum of Rs.93,54,87,965/- stands due and outstanding to the Financial Creditor by Corporate Debtor.
6. The Financial Creditor by letter dated 23.05.2023 agreed to restructure the dues of Corporate Debtor and other group being i.e Raghav Conpro LLP. They have received Rs.6.37 crores through monetizing the industrial shade in Raghav Conpro LLP only. Till date, Corporate Debtor has not made any payment against restructuring amount. Both of them have failed to repay the due instalment and defaulted the terms and conditions of restructuring agreement. The Financial Creditor, therefore, issued revocation notice dated



29.12.2023 to Corporate Debtor. The applicant therefore, prays for initiation of CIRP against the Corporate Debtor.

7. The respondent objected the application by filing reply and denied all the allegations levelled against them. The respondent submitted that the object of the company was changed in the year 2018 and then state of affairs of the Corporate Debtor are involved in construction and development of residential cum commercial project in Ahmedabad. Total 279 units of the project consists of home buyers. The project was commenced in November 2019 and bookings were started. Total 186 units were sold. Corporate Debtor further stated that financial assistance was obtained from ECL Finance Ltd., original lenders in the year 2018 and thereafter from other creditors. The Corporate Debtor could not achieve target of completion of the scheme due to delay in legal and statutory approval and pandemic situation of COVID-19. It is further stated that the Corporate Debtor obtained financial assistance from M/s. Axis RERA Opportunity Fund amounting to Rs. 65 crore for re-financial existing secured Financial Creditors. It is further stated that the said creditor had disbursed the



amount of Rs.65 crore out of which Rs.55 crores outstanding against the principal amount of the loan / credit facilities.

8. The Corporate Debtor further submitted that before issuance of recall notice, original lender assigned debt, security etc. to the applicant. It is further stated that on 31.05.2022, applicant issued recall notice demanding Rs.530318487/- and thereafter notice under SARFAESI Act dated 21.07.2022 was issued demanding Rs.572496064/-. It has further submitted that letter was issued for a one time settlement dated 23.05.2023 and Ms. Raghav Conpro LLP for an amount of Rs.39 crores against the restructuring of dues of Corporate Debtor and Rs. 16 crores against the restructuring dues of M/s. Raghav Conpro LLP totalling to Rs.55 crore. The first instalment was to commence from 30.06.2023 and scheduled to end on 31.03.2025.
9. The Corporate Debtor further stated that again they were compelled to obtain financial assistance from other secured Financial Creditor M/s. Swamih Investment Fund-I for Rs. 60 crores by way of subscription to non-convertible debentures for executing the project. The said creditor has



disbursed Rs. 52 crores out of which Rs.52 crores are outstanding against the principal amount of the loan /. The Corporate Debtor has paid first instalment of Rs.5,50,00,000/- within time schedule but second instalment was not fully paid so the applicant issued revocation letter and filed this application.

10. The Corporate Debtor further submitted that applicant had knowledge of financial difficulties of Corporate Debtor and application filed before the DRT by the applicant is pending for adjudication. Thereafter, re-structuring agreement was executed. Simultaneously applicant issued notice of sale of assets of Corporate Debtor on 10.04.2024. It shows ulterior motive of the applicant and is nothing but forum shopping through misuse of IBC, 2016 and SARFAESI Act. It is further submitted that applicant has not fulfilled its obligation to issue provisional NoC for monetizing secured assets. It resulted in failure of Corporate Debtor to proceed with the project. It is submitted that Corporate Debtor should not be punished or admitted into CIRP on account of wrong doings of the applicant and this application is filed



with malicious intent to recover the debt and attract the provisions of Section 65 of IBC, 2016.

11. On 10.04.2024, the Corporate Debtor obtained building usage certificate which entitles it to sell all commercial units and some residential units. The Corporate Debtor is a going concern having material size real estate project on hand and has employees and labourers. It has involvement of huge number of home buyers. All stakeholders will be prejudiced with irreparable loss if it is admitted for CIRP. The applicant is not willing to fulfil its obligation for survival of the Corporate Debtor, hence, prayed for disposal of the application in the larger interests of the home buyers.
12. SBI Ventures Ltd. filed its written submissions as a intervener as per order dated 28.08.2024 in IA 1050 of 2024. It is investment manager of a fund viz. Special Window for Affordable and Middle-Income Housing Investment Fund-I (Swamih Investment Fund-I). Its sponsorer is Government of India through the Secretary of Department of Economic Affairs, Ministry of Finance. It is formed with intention to invest in stalled residential projects that require last mile funding for completing the projects



having support from conventional banking channels to provide relief to home buyers.

13. The Intervener further submitted that in November 2023, as per request of Corporate Debtor, Debenture Trust Deed was signed by SBI through Swamih Funds to subscribe debentures for which IDBI Trusteeship Service Ltd., was appointed to act on behalf of them. Various documents were signed between the parties. They came to know about this application and learnt that Financial Creditor did not disclose the charge created in the project qua SBI Venture Deed. It is further submitted that as on date, there are residential towers constructed in the project and 20 commercial units out of which for two towers, occupation certificate is received on 10.04.2024 and remaining two towers are almost completed. Hypothecated properties are situated in completed tower which are ready for occupation and sale. There are only 92 unsold residential and 19 unsold commercial units and therefore requested not to initiate CIRP of the Corporate Debtor in the interest of public money of home buyer.



14. Heard Learned Counsel for the applicant, Corporate Debtor and intervener.
15. The intervener opposed initiation of CIRP during arguments. Later the Learned Counsel for the intervener appeared submitted that now they have no objection for initiation of the CIRP against the Corporate Debtor. Intervener was directed to file affidavit and accordingly intervener has filed affidavit dated 17.09.2024. The intervener stated that SBI Ventures made several inquiries with the Corporate Debtor relating to the project but the Corporate Debtor was not responding and stopped cooperating. Therefore, it appears that Corporate Debtor is no longer inclined to complete the project in a timely manner. Therefore, they are not opposing the admission of the petition now.
16. The grant of Term Loan, various facilities, assignment agreement restructuring agreement etc. are not disputed by any party. It is also not denied that proceedings were initiated by the applicant against the Corporate Debtor under SARFAESI Act.
17. The Corporate Debtor has acknowledged the debt and default. The applicant therefore, submitted that CIRP in



respect of Corporate Debtor will be in the public interest and benefit of all creditors of Corporate Debtor.

18. As against this, Corporate Debtor submitted that the reconstruction agreement was executed on 09.05.2022 and immediately thereafter on 21.07.2022, the applicant issued a notice under SARFAESI Act as they could not pay the 2nd instalment fully. The restructuring agreements entered between the parties were immediately withdrawn and action u/s 7 of IBC, 2016 was initiated. The corporate debtor further submitted that the applicant filed section 7 application was also supplemented simultaneously by issue of notice of sale of assets of Corporate Debtor. Sale notice was also published in the newspaper to create pressure on the Corporate Debtor. They have also issued notice under N.I. Act for recovery of amount. According to the Corporate Debtor, in order to extort advantage through unfairness and abuse the process of IBC, with the intention to extort money from the Corporate Debtor, the applicant has issued notice and is not having intention to keep the Corporate Debtor as a going concern. According to the Corporate Debtor, intention of applicant is *malafide* to recover its outstanding



dues through pressure tactics and not resolution being primary intent and objet of the IBC, 2016 by initiating simultaneous proceedings. They have pointed out that the applicant was under obligation to issue provisional NoC for monetizing secure assets which was not issued by them. Therefore, the Corporate Debtor could not proceed with the sale of units to prospective buyers and generate revenue. According to the Corporate Debtor, the action of the applicant attracts provisions of Section 65 of the IBC, 2016. It has not approached the Tribunal with clean hands and filed application to recover money.

19. The corporate debtor further submitted that total 279 units are to be constructed out of which, 185 are residential units sold to home buyers. The project was also financed by other secured and unsecured creditors. Only 19 commercial units were secured with the applicant and rest of all the units with other creditors. They have also obtained building usage certificate on 10.4.2024 which entitles to enter into markets. They have employed 20 employees on role and other role and other contractual workers so also home buyers will be affected if it is dragged into the CIRP. The



Corporate Debtor further submitted that RBI has directed original ECL as well as applicant to cease and desist from their business operation.

20. From the record, it appears that immediately after the assignment of dues to the applicant, it has issued notice to the Corporate Debtor. Though a one-time settlement was accepted by the applicant on default of payment of half of the instalment immediately, the offer was revoked and the restructuring letter was withdrawn. It is pertinent to note that the applicant simultaneously initiated various actions for recovery of the amount. They have filed original application before Debt Recovery Tribunal. They have filed proceedings under N.I Act. They have also issued notice of sale of the assets of the Corporate Debtor, that too after filing of this application, which clearly shows that applicant is not interested in resolution of debt but only interested to recovery amount by any method. It shows malafide intention of the applicant to misuse the provisions of IBC, 2016 without considering object of the provisions of IBC, 2016. It is also necessary to mention that applicant itself failed to issue no objection certificate to the Corporate



Debtor as per its request so that they would be able to collect some funds to repay the debt.

21. This project is for development of residential as well as commercial premises. Stake of various home buyers is involved in it. As stated by the Corporate Debtor, project is almost completed and also Building Usage Certificate was issued by the concerned authorities. It is a going concern having various employees and workers. Considering larger interest of project for home buyers, government entities are also helping for completion of the project. In this case also government entity SBI Cap Venture Ltd. intervene into the project as an investor. They have obtained a position of secured creditor and funded the Corporate Debtor through various debentures. Various agreements were executed by SBI Cap Venture Ltd. and M/s. Swamih Investment Fund. There is also mortgage deed executed between the IDBI Trusteeship Services Ltd and Corporate Debtor and promoter-I & promoter-II. With the help of this funds, it was tried that the project should be completed and all the stakeholders should be relieved.



22. It is surprising to note that initially the SBI Investors in the application has opposed for initiation of CIRP of the Corporate Debtor, however, later on submitted that as Corporate Debtor is not cooperating, it should be admitted into CIRP. No other reason is mentioned in their affidavit supporting CIRP of the Corporate Debtor. They have also not clarified what action they have taken for non-cooperation of Corporate Debtor and with respect to execution of mortgage deed etc with the Corporate Debtor. When the funds were given by way of such Trustee Agreement, they have also acquired some rights. Simply to say admit the Corporate Debtor into CIRP is not proper way of submissions after intervening in the matter for opposing CIRP by intervener Government entity.
23. As mentioned above, it appears that the applicant has not cooperated respondent for issuing NoC. There are some lacuna on the part of the applicant, therefore, simply because there is debt and default, CIRP cannot be initiated. Corporate Debtor is a going concern. Acts of applicant shows intent of only recovery of money through this process which is not at all object of the IBC, 2016. It appears that



application is premature. Observations in Vidarbha Industries Power Limited V. Axis Bank Limited also supports non-initiation of CIRP in case of going concern Corporate Debtor. Thus, we have not satisfied that on the facts of the present case mentioned above, CIRP should be initiated against the Corporate Debtor.

24. Hence, we pass following order:

ORDER

CP(IB) 104 of 2024 is rejected.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)