



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

C.P. No. (IB) 239/MB/C-III/2024

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Edelweiss Asset Reconstruction Company Limited

Having registered office at: Edelweiss House, Off. CST Road, Kalina, Mumbai – 400098.

...Financial Creditor/Petitioner

Versus

Jupiter Landscapes Private Limited

Having registered office at: F 1, Plot No. 99, Kavya Aura, Ground Floor, Tulsiwadi, Sitaram, Ghadigaonkar, Tardeo, Mumbai City, Mumbai, Maharashtra – 400034.

...Corporate Debtor/Respondent

Order pronounced on: 01.10.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Financial Creditor: Adv. Dhiraj Mhetre a/w Adv. Nayan Mahar & Tamanna Meghrajani i/b Khaitan Legal Associates

For the Corporate Debtor: Adv. Ernest N Tuscano

Per: Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)



1. This Company Petition has been filed by Edelweiss Asset Reconstruction Company Limited (**“Petitioner/ Financial Creditor”**) to initiate Corporate Insolvency Resolution Process (**“CIRP”**) against Jupiter Landscapes Private Limited (**“Respondent/Corporate Debtor”**) under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**) for the alleged default committed in re-payment of Non-Convertible Debentures of **Rs.573,98,36,456/-** issued by the Corporate Debtor to the Principal Debenture Holder i.e., ECL Finance Limited in March 2018.

Brief Facts:

2. Mr. Ambish Shah and Ms. Amisha Shah are the Directors of Corporate Debtor - Jupiter Landscapes Private Limited holding 99% and 1% shares respectively. The Corporate Debtor is engaged in the business of building, development and sales of real estate projects.
3. In order to meet its fund requirements to carry on its business operations, development of projects and other such purposes, Corporate Debtor decided to raise funds by issuing secured, redeemable Non-Convertible Debentures (**“NCD’s”**).
4. A Debenture Trust Deed was executed between Jupiter Landscapes Private Limited/Issuer and Beacon Trusteeship Limited/Debenture Trustee on 07.03.2019. The Issuer had appointed the Debenture Trustee to act as the trustee for the holders of the Debentures and obtained the Debenture Trustee’s consent by letter dated 05.02.2019. The Issuer pursuant to:
 - a. *Resolution passed by the Board of Directors of the company at their meeting held on 05.03.2019.*
 - b. *Special Resolutions passed by its shareholders (Corporate Debtor) in terms of Section 42 and Rule 14(2) of the Companies (Prospectus and Allotment of Securities) Rules 2014 for private placement of its debentures on 06.03.2019.*



Proposed to issue 1850 secured, redeemable, non-convertible debentures with the face value of Rs. 10,00,000/- each, in one or more tranches, for an aggregate amount of Rs. 185,00,00,000/- on a private placement basis, on the principal terms and conditions contained in the Second Schedule hereto and the disclosure document dated 11.03.2019 (“Disclosure Document”).

5. Pursuant to the issuance of the NCD's by the Corporate Debtor, ECL Finance Limited subscribed to 1850 NCD's with a face value of Rs. 10,00,000/- (Rupees Ten Lakh Only) each, for an aggregate amount of Rs. 185,00,00,000/- (Rupees One Hundred and Eight-Five Crore Only).
6. As per the particulars under 'Financial Covenants and Conditions' in 'Schedule II' of the Debenture Trust Deed: -

Redemption Date or Due Date	The Issuer/Obligors/Security Providers shall redeem the Debentures by paying the Redemption Price to the Debenture Holders on the last date of 48th Month from the Date of Allotment of the Debentures (“Redemption Date”). The Debentures shall be redeemed on a ‘pari passu basis’ i.e., ranking equally and without preference.
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Default Interest	@ 2% p.m. for the period of default. The default interest shall be over and above the Applicable Interest rate.
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7. The Corporate Debtor defaulted in its obligations to repay and consequently on 26.03.2023, the loan account of the Corporate Debtor was classified as a Non-Performing Asset in the books of ECL.



8. As per Part IV of Form 1, the Corporate Debtor defaulted in its obligations to repay the Redemption Price on 26.03.2023 and the total default amount as on 24.11.2023 was Rs.563,98,37,457/- which included Principal Amount – Rs.185,00,00,000/-; Interest – Rs.132,93,12,282/- and Default Interest – Rs.256,05,25,175/-. The computation of the default has been elaborated in the following tabular form: -

Date	<u>Particulars</u>	<u>Principal</u>	<u>Redemption premium</u>	<u>Additional Interest (Project Milestone)</u>
27.03.23	Assigned Dues	1,85,00,00,000	1,11,33,42,285	1,32,71,33,858
31.03.23	Charges Due		39,62,752	48,65,752
30.04.23	Charges Due		2,97,20,642	3,64,93,140
31.05.23	Charges Due		3,07,11,330	3,77,09,578
30.06.23	Charges Due		2,97,20,642	3,64,93,140
31.07.23	Charges Due		3,07,11,330	3,77,09,578
31.08.23	Charges Due		3,07,11,330	3,77,09,578
30.09.23	Charges Due		2,97,20,642	3,64,93,140
31.10.23	Charges Due		3,07,11,642	3,64,93,140
	TOTAL	1,85,00,00,000	1,32,93,12,282	1,59,23,17,342



9. Subsequently, ECL Finance Limited, assigned the debt of the Corporate Debtor arising out of the subscription of NCD's, in favour of the Petitioner, i.e., Edelweiss Asset Reconstruction Company Limited vide the Assignment Agreement dated 31.03.2023.
10. The Financial creditor has attached copies of **Information Utility - NeSL** records where information of debt as of 27.03.2023 is Rs. **429,04,67,143.00/-**, i.e., the sum of Assigned Dues as on 27.03.2023 (1,85,00,00,000 + 1,11,33,42,285 + 1,32,71,33,858) also this amount is without the application of default interest @2% per month for the period of default. The Default Charges have been computed in the following tabular form: -

<u>Default Charges On</u>			
<u>Date</u>	<u>Principal</u>	<u>Redemption Premium</u>	<u>Project Milestones</u>
31.03.23	48,65,752	53,17,248	69,81,088
30.04.23	3,64,93,140	3,98,79,360	5,25,50,130
31.05.23	3,77,09,578	4,12,08,672	5,57,89,522
30.06.23	3,64,93,140	3,98,79,360	5,54,77,560
31.07.23	3,77,09,578	4,12,08,672	5,88,14,533
31.08.23	3,77,09,578	4,12,08,672	6,03,51,854
30.09.23	3,64,93,140	3,98,79,360	5,98,92,750
31.10.23	3,77,09,578	4,12,08,672	6,33,76,896
Total	26,51,83,484	28,97,90,016	41,32,34,333

$$26,51,83,484 + 28,97,90,016 + 41,32,34,333 = 256,05,25,175$$

Hence, default interest payable is **Rs. 256,05,25,175**



Submissions by the Corporate Debtor

11. The Corporate Debtor submitted that the averments made in the captioned petition and the exhibits annexed are true and admitted.
12. The Corporate Debtor submitted that they had purchased a Real Estate Project at Thane. Due to the offset of the covid-19 pandemic and several other headwinds faced by the Real Estate Industry, the Corporate Debtor could not continue with development activities. Due to these circumstances the Corporate debtor could not service the financial assistance given by the Financial Creditor to the Corporate Debtor.
13. The Corporate Debtor further submitted that, in the interest of the Financial Creditor and the purchasers of the flats in the present project, the Corporate debtor has no objection to proceed for Initiating Corporate Insolvency Resolution Process.

Observations and Findings

14. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
15. As per the submissions made by the Financial Creditor and the exhibits annexed it is established that the Corporate Debtor failed to punctually repay the outstanding amounts including Principal amount of the debentures, the interest and the default interest which summed up to Rs. 563,98,37,457/- hence, debt and default are established.
16. The Corporate Debtor has not raised any objection to the Financial Creditor’s right to pursue this application.
17. We are supported by the decision of Hon’ble Supreme Court in **Innoventive Industries Limited vs. ICICI Bank and Anr**



[(2018) 1 SCC 407] that once we are satisfied that a debt and default has occurred, then the application under Section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder.

18. Upon perusal, this Tribunal is of considered opinion that the application made by the Financial Creditor is complete as mandated under the Code and the default amount is also in excess of the minimum amount of Rs. 1,00,00,000/- stipulated in section 4(1) of the Code.
19. The Redemption Date and the Due Date of the repayment of debentures was the last date of the 48th Month from the Date of Allotment of the Debentures i.e., 27.03.23. The present Company Petition was filed on 01.12.2023, within the limitation period, and therefore we are satisfied that the present petition is maintainable.
20. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 239 of 2024 is **admitted** and ordered as follows:

ORDER

21. The above Company Petition No. (IB) 239 (MB)/2024 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Jupiter Landscapes Private Limited**.
22. The Petitioner has proposed the name of Kanchansobha Debt Resolution Advisors Private Limited, Registration No. IBBI/IPE-00059/IPA-1/2022-2023/50037, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 23.11.2023 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication was accompanied by AFA dated 16.03.2023 in which the Authorization for Assignment valid from 16.03.2023 up to 15.03.2024. Due to the expired AFA, further



clarifications were sought. Therefore, a fresh AFA dated 15.04.2024 was brought on record in which the authorization is valid from 15.04.2024 to 30.06.2025. Accordingly, **we appoint Kanchansobha Debt Resolution Advisors Private Limited (irp@kanchansobha.com) as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.

23. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.
24. There shall be a moratorium under section 14 of the Code prohibiting the following:
 - 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 the possession of the Corporate Debtor.



25. 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.
26. The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
27. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
28. The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
29. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
30. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
31. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
32. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
33. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.



34. The Company Petition **No. 239 of 2024** is accordingly **admitted**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Vaishnavi, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)