

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.1031 of 2023

[Arising out of order dated 25.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No.5 in C.P.(IB) 1166/MB/2020]

IN THE MATTER OF:

1. Perfect Nivesh Infra Private Limited

Having its Registered Office at:
1101 Viraj Towers,
Junction of Andheri Kurla Road,
W.E. Highway, Andheri (E)
Mumbai – 400093
Maharashtra

2. Ms. Chetana Shah

A 29, Nikash Skies
Off Baner Rd,
Someshwar wadi
Pune – 411008.

...Appellants

Vs.

1. Edelweiss Asset Reconstruction Company Ltd.

Having its Registered Office at:
Edelweiss House,
Off C.S.T. Road, Kalina,
Mumbai,
Maharashtra – 400098.

2. Perfect Engine Components Pvt. Ltd.

Through M/s ARCK Resolution Professionals
Having its Registered Office at:
Flat No. 409, 4th Floor, Ansal Bhawan,
16, Kasturba Gandhi Marg,
New Delhi – 110001.

...Respondents

Present:

For Appellants: Mr. Umesh Kumar Chaudhary, Sr. Advocate with Mr. Pulkit Deora, Mr. Ayushman Bhutani, Ms. Maitryee Mishra, Mr. Harsh Gurbani, Advocates.

For Respondents: Mr. Krishnan Venugopal, Sr. Advocate with Mr. Kaushik Mishra, Advocate for R-1.

Mr. Abhishek Anand, Mr. Mohak Sharma and Mr. Supriyo Baherjee, Advocates for R-2.

Cont'd.../

With

Company Appeal (AT) (Insolvency) No.1055 of 2023

[Arising out of order dated 06.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court No. IV in C.P.(IB) No.1164/MB-IV/2020]

IN THE MATTER OF:

1. Perfect Nivesh Infra Private Limited

Having its Registered Office at:
1101 Viraj Towers,
Junction of Andheri Kurla Road,
W.E. Highway, Andheri (E)
Mumbai – 400093
Maharashtra

2. Ms. Chetana Shah

A 29, Nikash Skies
Off Baner Rd,
Someshwar wadi
Pune – 411008.

...Appellants

Vs.

1. Edelweiss Asset Reconstruction Company Ltd.

Having its Registered Office at:
Edelweiss House,
Off C.S.T. Road, Kalina,
Mumbai,
Maharashtra – 400098.

2. Perfect Engineering Products Limited

Through M/s ARCK Resolution Professionals
Having its Registered Office at:
Flat No. 409, 4th Floor, Ansal Bhawan,
16, Kasturba Gandhi Marg,
New Delhi – 110001.

...Respondents

Present:

For Appellants: Mr. Umesh Kumar Chaudhary, Sr. Advocate with Mr. Pulkit Deora, Mr. Ayushman Bhutani, Ms. Maitryee Mishra, Mr. Harsh Gurbani, Advocates.

For Respondents: Mr. Krishnan Venugopal, Sr. Advocate with Mr. Kaushik Mishra, Advocate for R-1.
Mr. Abhishek Anand, Mr. Mohak Sharma and Mr Supriyo Baherjee, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

Company Appeal (AT) (Ins.) No. 1031 of 2023 by two Appellants i.e. Perfect Nivesh Infra Private Limited and Ms. Chetana Shah, Suspended Director of the Corporate Debtor has been filed challenging order dated 25.04.2023 by which order Section 7 application filed by Edelweiss Asset Reconstruction Company Ltd. (Respondent herein) being C.P.(IB) 1166/MB/2020 has been admitted finding debt and default on the part of the Corporate Debtor. Company Appeal (AT) (Ins.) No. 1055 of 2023 has been filed by Perfect Nivesh Infra Private Limited and Ms. Chetana Shah, Suspended Director of the Corporate Debtor challenging the order dated 06.06.2023 by which order Section 7 application being C.P.(IB)No.1164/MB-IV/2020 filed by Edelweiss Asset Reconstruction Company Ltd. (Respondent herein) has been admitted by the National Company Law Tribunal, Mumbai Bench – IV. The Corporate Debtor in both the appeals are sister concern. The Appellant No.1 herein claim to be investment vehicle for the Shrem Group to invest fresh share capital into the Corporate Debtor and Appellant No.2 is Suspended Director of the Corporate Debtor.

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2. In the year 2008, State Bank of India granted a facility to Perfect Engine Components Private Limited (PECPL). Additional facility was granted

by Sanction Letter dated 31.03.2011. On 28.06.2012, the State Bank of India declared the creditor facilities provided to the Appellant as Non-Performing Assets (NPA). Proceedings under Section 13(2) of SARFAESI Act, 2002 was initiated and OTS offer was made on behalf of the Corporate Debtor on 03.01.2014 which was rejected by the State Bank of India on 18.01.2014. Sister concern of the Corporate Debtor was part of the negotiation with the State Bank of India. On 19.03.2014, the State Bank of India assigned the debt to the Respondent - Edelweiss Asset Reconstruction Company Ltd. The restructuring package was also given by the Financial Creditor to the tune of Rs.192.50 Crores to settle the liabilities of Perfect Engine Components Private Ltd. and its associates – Perfect Engineering Products Ltd. and Karla Engine Components Ltd. (jointly referred to as the Perfect Group). The restructuring package was revoked on 22.09.2016. Another restructuring proposal was accepted by the Respondent on 10.10.2017 which was subsequently revoked on 01.06.2018. C.P.(IB) 1166/MB/2020 was filed by the Respondent against Perfect Engine Components Private Ltd. to which reply was filed by the Corporate Debtor. Adjudicating Authority dismissed the Section 7 application holding that there was no default by the Appellant and secondly the petition was barred by limitation on 10.08.2021. The Respondent aggrieved by the order filed Company Appeal (AT) (Ins.) No. 840 of 2021, which was allowed by this Tribunal on 22.12.2022 setting aside the order of the Adjudicating Authority and direction the Adjudicating Authority to consider the Company Petition on merits. The Perfect Engine Components Private Ltd. filed appeal before the Hon'ble Supreme Court being Civil Appeal No. 492 of 2023 challenging the order of this Appellate Tribunal which appeal also came to be

dismissed on 17.02.2023. The Adjudicating Authority after hearing both the parties by order dated 25.04.2023 admitted Section 7 application holding that debt and default is proved. It was also held that debt is acknowledged by the Corporate Debtor in the Balance Sheet.

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3. The State Bank of India has granted Term Loan to the Corporate Debtor – Perfect Engineering Products Ltd. in the year 2007. There are further Sanction Letters and NPA was declared on 28.06.2012. Proceeding under SARFAESI Act, 2002 was initiated in the year 2013. An OTS offer was made on 03.01.2014, which was rejected by the State Bank of India. State Bank of India assigned its debt on 19.03.2014 to Edelweiss Asset Reconstruction Company Ltd. A consolidated Restructuring Proposal was approved with regard to the Corporate Debtor and other two group companies, which was subsequently revoked on 22.09.2016. Another Restructuring Proposal was accepted on 10.10.2017, which was also revoked subsequently in the year 2018. Application under Section 7 was filed against the Corporate Debtor on 07.08.2020 in which reply was filed by the Corporate Debtor. The application under Section 7 was admitted on 06.06.2023 finding debt and default.

4. We have heard Shri U. K. Chaudhary, learned senior counsel for the Appellant in both the Appeals. Learned counsel for the Appellant submitted that facts and ground to challenge orders in these Appeals are identical.

5. Shri Chaudhary adverting to his submission in Company Appeal (AT) (Ins.) No. 1031 of 2023 submits that there was allegation made by the

Corporate Debtor that proceedings initiated by the Edelweiss Asset Reconstruction Company Ltd. were fraudulently and maliciously initiated, hence, the proceedings deserve to be dismissed under Section 65 of the I&B Code. It is submitted that the said submission was advanced before the Adjudicating Authority but the same has not been addressed. It is submitted that with regard to the Corporate Debtor – Perfect Engine Components Private Ltd., in the earlier round before this Appellate Tribunal as well as before the Hon’ble Supreme Court issue pertaining to Section 65 has not been considered. It is submitted that proceedings were initiated by the Financial Creditor only as recovery mechanism which is not permissible.

6. We have considered the submissions of learned counsel for the Appellant and perused the record.

7. With regard to Company Appeal (AT) (Ins.) No. 1031 of 2023, it is to be noticed that initially when Section 7 application was rejected on the ground that there was no default and the application is barred by limitation, the matter was taken to this Tribunal by means of Company Appeal (AT) (Ins.) No. 840 of 2021, which appeal was allowed by this Tribunal holding that there is debt and default. In para 8 and 9 of the judgment following was held:

*“8. It is also seen from the Balance Sheets that there has been an ‘acknowledgement of liability’ upto the years 2018-19. The contention of the Learned Counsel for the Respondent that the Restructuring Letters were sanctioned beyond three years of the date of NPA and therefore is ‘barred by Limitation’ is untenable as at the cost of repetition we hold that as per the ratio of the Hon’ble Apex Court in ‘**Laxmi Pat Surana’ (Supra)***

the 'date of default' cannot be strictly construed as the date of NPA. The material on record shows that the 'Corporate Debtor' has been consistently acknowledging its 'debt' from 31.03.2010 onwards by way of letters in Restructuring Packages, and also by way of communication the Appellant/'Financial Creditor' for Restructuring, apart from the liability being shown in the Balance Sheets.

*9. For all the aforementioned reasons we are of the considered view that the Section 7 Application is not 'barred by Limitation', and that there is a 'debt' and 'default', and the facts of the instant case are squarely covered by the ratio of the Hon'ble Apex Court in '**Dena Bank (now Bank of Baroda)**' (Supra)."*

8. It is to be noticed that against the said judgment the matter was taken in the appeal by Perfect Engine Components Private Ltd., the Corporate Debtor by means of Civil Appeal No.492 of 2023 challenging the order passed by this Tribunal. Only ground raised was that under the Restructuring Proposal, Appellant was liable to pay the amount from the operational cashflow only. The amount was not payable unless there was operational cashflow, which submission was expressly rejected by the Hon'ble Supreme Court by its judgment dated 17.02.2023, which order is as follows:

"ORDER

We do not find any good ground and reason to interfere with the impugned judgment, as in our opinion, the appellant had to pay Rs.77.50 crore in installments with effect from 30.06.2015 towards the satisfaction of the decretal amount. The stipulation in

the Restructuring Package/Proposal that the appellant will pay the said amount from the 'operational cashflow cannot be read as a condition precedent for making payment. This would not be a correct way to read the agreement/Restructuring Package/Proposal. Thus, the argument that unless there was/is 'operational cashflow', the amount was/is not payable, is completely untenable and is rejected.

Recording the aforesaid, the appeal is dismissed.

Pending application(s), if any, shall stand disposed of.”

9. The submission which has been much pressed by learned counsel for the Appellant that initiation of the proceedings was malafide and fraudulent. He submits that said question has not been adverted to by the Adjudicating Authority in the impugned order.

10. We may notice that in the present case debt and default is not an issue which is under question. Twice Restructuring of the facilities granted by the Financial Creditor in the years 2014 and 2017, which were not honoured and the ground which was raised by the Corporate Debtor - Perfect Engine Components Private Ltd. has been repelled by the Hon'ble Supreme Court by its judgment, as noticed above. The Corporate Debtor having committed default, initiation of Section 7 proceeding by Assignee of the State Bank of India cannot be said to be malicious or fraudulent. The State Bank of India has assigned its debt to the Edelweiss Asset Reconstruction Company Ltd on 19.03.2014 and assignee on the strength of assignment has initiated the proceeding under Section 7. The Adjudicating Authority in its order dated

25.04.2023 has also repelled the contention of the Appellant that Financial Creditor has played fraud and the Petitioner is acting malafide in filing the petition. In Para 30 and 31 following has been held:

“30. The argument of the Corporate Debtor that by virtue of the Petitioner holding shares in the Corporate Debtor, the Petitioner is acting malafide in filing the present petition is entirely unfounded and frivolous. On the contrary, it is submitted that in fact by virtue of the Petitioner holding 13.5% equity shares, the Petitioner is acting in a judicious manner to not act against its own interest and to rehabilitate the Corporate Debtor at the earliest in order to ensure the financial stability of the company and its economic interest therein as also to safeguard the livelihood and interest of the 600 employees working in the Company.

31. The contention of the Corporate Debtor that the Petitioner is guilty on playing a fraud on the court is entirely baseless, mischievous and devoid of any material particulars. The fact that the petitioner had been involved at an anterior stage between the original Creditor namely SBI and the Corporate Debtor in negotiations that had taken place between the said parties is entirely irrelevant to the maintainability and tenability of the present proceedings.”

11. We, thus, are of the view that submission of the Appellant that Financial Creditor is acting malafide in filing the petition has been expressly

rejected by the Adjudicating Authority, hence, the submission of the Appellant that said submission was not considered, cannot be accepted.

12. There being debt and default on the part of the Corporate Debtors in these two Appeals, which is not in question, we see no error in the orders of the Adjudicating Authority admitting Section 7 applications. In result, both the Appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

31st August, 2023

Archana