

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO. 1027/I&BP/NCLT/MAH/2017**

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

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

1. Edelweiss Asset Reconstruction Company Ltd.
Edelweiss House, C.S.T. Road, Kalina,
Mumbai – 400 098, Maharashtra Financial Creditor/Applicant
2. Kohinoor CTNL Infrastructure Company Pvt. Ltd.
Kohinoor Corporate Office,
Senapati Bapat Marg, Shivaji Park,
Dadar West, Mumbai – 400 028,
Maharashtra. Corporate Debtor/Respondent.

Counsel for the Financial Creditor: Mr. Mandar Soman a/w. Mr. Rajesh Vaidya, Advocates

Counsel for the Corporate Debtor: Mr. Chetan Kapadia a/w. Mr. Animesh Bisht, Mr. Abhishek Mukherjee, Ms. Megha Sharma, Mr. Anush Mathkar, Advocates i/b Cyril Amarchand Mangaldas

ORDER

(Heard on 15.06.2017)

(Pronounced on 16.06.2017)

Per V. Nallasenapathy, Member (Technical)

The Financial Creditor namely Edelweiss Asset Reconstruction Company Ltd. filed this Company Petition on 3.5.2017 stating that the Corporate Debtor namely Kohinoor CTNL Infrastructure Company Pvt. Ltd. has defaulted in making the repayment of the financial debt of Rs.50,96,72,863/- which was assigned to it by the original lender Andhra Bank.

2. The Financial Creditor states that the Corporate Debtor and various Financial Institutions entered into a common Loan Agreement on 1.6.2010 based on which the Corporate Debtor was granted certain loan facilities. Andhra Bank , Special Corporate Finance Branch, 16 B, Earnest House, 194 NCPA Marg, Nariman Point, Mumbai is one of the lending agency, which has granted Rupee Term Loan of Rs.93,75,00,000/- starting from 24.6.2010 which was disbursed in multiple tranches. The Financial Creditor further states that the Corporate Debtor and various Financial Institutions entered into another Common Loan Agreement dated 29.9.2014 for sanction certain credit facilities. The same Andhra Bank is one of the lending agency, which has granted further credit facilities of Rs.23,12,04,580/- (out of the sanctioned facility of Rs.31,00,00,000/-) starting from 29.11.2014 which was disbursed in multiple tranches.

3. The above said credit facilities sanctioned by the Andhra Bank including all rights, title, interest and security in relation to the facilities extended by Andhra Bank were assigned to EARC Trust by Andhra Bank vide a registered Assignment Agreement dated 31.3.2016 executed between Andhra Bank and Edelweiss Asset Reconstruction Company Ltd. (EARC) acting in its capacity as Trustee of EARC Trust. The said Assignment Agreement reveals that there is an outstanding due of Rs.74,35,90,726/- payable by the Corporate Debtor to Andhra Bank as on the date of Assignment. The said Agreement also discloses the security documents executed by the Corporate Debtor and also discloses the security created by the Corporate Debtor in favour of Andhra Bank.

4. The Financial Creditor enclosed a certificate dated 6.4.2017 issued by Andhra Bank under Section 2(A) (a) of the Bankers Books of Evidence Act, 1891 certifying that a statement of account bearing nos. 112830100000584

from 24.6.2010 to 31.3.2016 and account no. 112830100002263 from 28.11.2014 to 31.3.2016 (M/s. Kohinoor CTNL Infrastructure Co. Pvt. Ltd.) at the Andhra Bank, SCF Branch, Mumbai where the account of the said borrower is maintained in the books of bank in a written form and consists of printouts of the data stored in a hard disk and is a print out of such entry/copy of print out of such entry. The said certificate reveals that there is a debit balance of Rs.47,76,79,237/- in one account and a sum of Rs.24,30,20,763/- in another account. This is a clear proof of the debt due to the Financial Creditor who is the assignee of the debt assigned to it by Andhra Bank.

5. The Financial Creditor further states that the total due is Rs. 50,96,72,863/- as on 26.4.2017 and the default occurred on 31.12.2015. The financial creditor enclosed a letter dated 18.05.2015 issued by Andhra Bank to the Corporate Debtor on 13.05.2015 stating that the term loan account of the Corporate Debtor is overdue. The Corporate Debtor by a letter dated 06.03.2017 addressed to EARC Trust-SC212, Edelweiss Asset Reconstruction Ltd. admitted and acknowledged the liability payable to the Financial Creditor to the extent of Rs. 80,34,98,054/- as on 30.09.2016. The CIBIL report dated 25.04.2017 is also annexed to the petition. The financial creditor has enclosed the financial statement of the Corporate Debtor as on 31.03.2016, wherein in the note No. 34 forming part of the financial statement, it has been stated as *"there has been delay in achieving the project completion by over 2 years for reasons stated in Note 24 above. The delay in project completion has led to increase in interest cost during construction period and escalation in construction cost substantially. Further, the company has defaulted in repayment of principal and interest on term loans from the banks since March 2015"*.

6. The Counsel appearing on behalf of the Corporate Debtor candidly admitted that the debt is owed by the Corporate Debtor as disclosed by the Financial Creditor in the Petition.

7. As to the Petition filed by the Financial Creditor, this Bench, on perusal of this documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in making payments and also placed the name of the Insolvency Resolution Professional to act as interim resolution Professional, having this Bench noticed that default has occurred and there is no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Application declaring Moratorium with the directions as mentioned below:

1. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
2. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

3. That 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.
4. That the order of moratorium shall have effect from 16.6.2017 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.
5. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
6. That this Bench hereby appoints Mr. Sripatham Venkatasubramanian Ramkumar, 303, Block 15, Hill Springs, Gachibowli, Hyderabad – 500 032 email: ramkumar.sv@in.ey.com, Registration No. IBBI/IPA-001/IP-P00015/2016-2017/10039 as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
8. Accordingly, this Petition is admitted.
9. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASHKUMAR
Member (Judicial)