

**In the National Company Law Tribunal  
Single Bench, Chennai**

CP/606/ (IB)/CB/2017

Under Section 7 of the IBC, 2016

**In the matter of**

**M/S. EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED**

V/s

**M/S. FRONTLINE PRINTERS PRIVATE LIMITED**

Order delivered on: 02/11/2017

For the Petitioner/FC : Shri. Vinod Kumar, Advocate

For the Respondent/CD: Shri. R. Parthasarathy, Advocate

Shri. Rahul Balaji, Advocate

Shri. Madan Babu, Advocate

Shri. Vishnu Mohan, Advocate

**Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)**

**ORDER**

Under consideration is a Company petition filed by M/s. Edelweiss Asset Reconstruction Company Limited acting in its capacity as Trustee for Edelweiss ARF - I Trust (in short, '**Petitioner/Financial Creditor**') against M/s. Frontline Printers Private Limited (in short, **Respondent/Corporate Debtor**) under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short **IB Code 2016**) r/w rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, **IB Rules 2016**)

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

3. The petitioner/FC is an Asset Reconstruction Company incorporated on 05.10.2007 having its registered office at Edelweiss House, off CST Road, Kalina, Mumbai – 400 098.

4. The learned Counsel for the Applicant submitted that the respondent has availed various loans to the tune of Rs. 20,14, 00,000/- from M/s Indian Bank. The said debt along with security interest was assigned to the Applicant vide an Assignment Agreement dated 31.10.2011 entered into between the Applicant and M/s. Indian Bank . Further a Restructuring Agreement was also entered into between the Applicant and the Respondent on 04.04.2012 and the debt due of the Respondent was fixed as Rs. 19,00,00,000/- payable to the Applicant in two instalments of Rs. 10,00,00,000/- by 30.06.2012 and Rs. 9,00,00,000/- by 30.10.2012. The Respondent failed to repay the said instalments on the due dates and in terms of the Restructuring Agreement, interest at the rate of 30% per annum is payable in the event of non- payment of instalments on the agreed dates.

5. The learned Counsel for the Applicant submitted that when the Corporate Debtor was unable to pay its financial debt which became due and payable on two dates, then the petitioner, left with no other option approached this Adjudicating Authority claiming the payment of Rs. 61, 09, 26,925/- including the interest against the corporate debtor in the capacity of a Financial Creditor under the provisions of the IB Code, 2016. The learned Counsel submitted that the Corporate Debtor has become commercially insolvent due to its inability to pay its debts and thus prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

6. The learned Counsel for the Respondent vehemently opposed the contentions raised by Counsel for the applicant and submitted that the instant

petition is not maintainable in law and facts for the reason that the petition is filed on behalf of a wrong entity viz, EARC Trust – SC 19 instead of Edelweiss ARF – I Trust. The application by a wrong party is not a curable defect since the same goes to the root of the matter and locus standi of a party to file the application. The same is not capable of being amended and there is no specific provision in the IB Code permitting filing of such an application for amendment or substitution of the Applicant. He has further submitted that the Applicant has initiated under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 by filing OA No. 454 of 2014 before the DRT- II Chennai for recovery of the sum allegedly due and payable by the Respondent. Finally the said OA has been dismissed as not maintainable vide order dated 04.08.2017, therefore the Applicant cannot enforce an alleged debt under IB Code when the matter has already been determined in favour of the Respondent. Therefore, there is no default for invocation of the IB Code by the Applicant.

7. The learned Counsel for the Applicant submitted for the above contentions of the Respondent, that under proviso to Section 7(5) of the IB Code read with Rule 11 and 155 of the NCLT Rules the Applicant can rectify any defect in the application. The Applicant has filed necessary application to rectify the defect. With regard to the contention that there is no debt and there is no default to invoke the IB Code, the learned Counsel for the Applicant submitted that the Respondent itself has admitted that the due amount is payable to the Applicant and even prayed not to take any coercive act against the Respondent. The DRT order also confirms that the Respondent has not disputed the debt in the DRT proceedings and the DRT gave the liberty to the applicant to file suit for recovery. In support of his submissions, the learned Counsel for the Applicant relied on the following judgments:



- (a) **Sree Metaliks Limited and others Vs UOI and others – Manu/WB/0236/2017** – To show that under Order 1 Rule 10 of the Code of Civil Procedure, 1908 any person can be substituted or added as plaintiff if there is a bonafide mistake.
- (b) **Bal Niketan Nursery School Vs Kesari Prasad – (1987) 3 Supreme Court Cases 587** – To show that if the court is satisfied that a bonafide mistake has occurred in the filing of the suit in the name of the wrong person then the court should set right matters in exercise of its powers under Order 1 rule 10 and promote the cause of justice and the courts should set right matters by ordering the addition or substitution of the proper plaintiff for ensuring the due dispensation of justice.
- (c) **M/s Edelweiss Asset Reconstruction Company Limited Vs Bharati Defence and others – Manu/NC/0981/2017** – To show that the assignee will automatically become Financial Creditor as stated in the definition to Financial Creditor to file the company petition.
- (d) **M/s. Indian Bank Vs Infinitas Energy Solutions Private Limited – Manu/NC/1250/2017** – To show that the Adjudicating Authority is exclusively created by the legislature to decide the insolvency matters filed by the Financial/Operational Creditors.

The learned Counsel for the Applicant based on the above submissions prayed to admit the petition.

8. Heard. Perused the pleadings and documents submitted by both the parties. The learned Counsel for the Applicant satisfied the Adjudicating Authority by filing relevant charge documents and the agreements entered into

between the Applicant and Respondent and the case laws in support of his submissions. The Applicant is proved that there is a debt due payable by the Respondent/CD and they have defaulted in making payments even after entering into the Restructuring Agreement and Respondent is responsible to pay. The objections raised by Counsel for the Respondent are not valid ground for rejection of the instant petition. Further, the case laws referred by the Applicant are supporting the submission that the bonafide mistake can be corrected and therefore the contention of the Respondent is not tenable and the entire case of the Applicant cannot be brushed aside at the threshold itself for a simple bonafide and curable mistake. In these circumstances the present name of the applicant is amended as prayed.

9. Therefore, in view of the above the instant petition is admitted and I order commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

10. I appoint Mr. Balasubramanian T. V, (Registration No. IBBI/IPA-01/IP-P00198/2017-2018/10388) of M/s. PKF Sridhar & Santhanam LLP 91/92, having office at VII Floor KRD Gee Gee Crystal, Dr. Radhakrishnan Road, Mylapore, Chennai – 600 004 as Interim Resolution Professional (IRP) proposed by the Applicant. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I & B Code, 2016 within three days from the date of the copy of this order is received and call for submissions of claim in the manner as prescribed.

11. I declare the moratorium which shall have effect from the date of this order till the completion of Corporate insolvency resolution process for the purpose referred to in Section 14 of the I & B Code, 2016. I order to prohibit all of the following, namely:

- (i) 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.
- (ii) Transferring, encumbering, alienating or disposing of by the corporate debtors any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (54 of 2002)
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

12. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

13. The IRP shall comply with the provisions of sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his



functions under Section 20 of the I & B Code. Accordingly, the application is admitted.

14. The petitioner/FC as well as the Registry is directed to send the copy of this order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this order as per the provisions of the I & B Code, 2016.

15. The Registry is also directed to communicate this order to the Financial Creditor and the Corporate Debtor.

16. With the above observations the application is disposed of.



**K. Anantha Padmanabha Swamy**

**Member (Judicial)**