

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

C.P. 381 OF 2022

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

In the matter of

M/s. Edelweiss Asset Reconstruction Company Limited

Edelweiss House, off CST Road, Kalina,
Mumbai-400 098

..... Financial Creditor

V/s

**Sadguru Multitrade Private Limited
[U74999MH200PTC168002]**

3RD Floor, Multiplex Building, Nirmal Lifestyle, LBS
Marg Mulund West, Mumbai- 400 080

.....Corporate Guarantor

Order Pronounced on: 17.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconference)

For the Petitioner:

Adv. Bhalchandra Palav

For the Corporate Debtor/ Respondent: Adv. Rishabh Jain

Per: Shri Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by M/s. Edelweiss Asset Reconstruction Company Limited, hereinafter called as “**Petitioner**” seeking to initiate of Corporate Insolvency Resolution Process (“**CIRP**”) Sadguru Multitrade Private Limited hereinafter called as “**Corporate Guarantor**” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016, for the Resolution of an unresolved Financial Debt of Rs. 861,72,93,061/-

FACTS OF THE CASE

2. The Petitioner submits that upon request of one Modella Textile Industries Ltd. & Ors. (hereinafter referred as “**Borrower**”), the ECL Finance Limited (hereinafter referred as “**Original Lender**”) had extended a financial assistance of Rs. 140,00,00,000/- by way of a revolving loan facility (hereinafter referred as “**said Loan**”). In this regard, a loan facility agreement was executed on 17.11.2017. In addition to this, the Respondent had executed a Debenture Trust Deed dated 17.11.2017 in favour of Beacon Trusteeship Limited (hereinafter referred as “**Debenture Trustee**”), whereby the Borrower issued 3100 secured, redeemable, non-convertible debentures having face value of Rs. 10,00,000/- each aggregating to Rs. 310,00,00,000/-. Under the said agreement, one Beacon Trusteeship Limited was appointed as the Debenture Trustee. Apart from that, the said loan facility was secured by executing following documents:

- a. Indenture of Mortgage dated 17.11.2017;
- b. Corporate Guarantee dated 17.11.2017;
- c. Personal Guarantee dated 17.11.2017

3. The Corporate Guarantee dated 17.11.2017 was also executed by Bali Properties and Investments Private Limited, Nirmal Lifestyle Limited, Videocon Realty and Infrastructure Limited and Sadguru Multitrade Private Limited in favour of the Original Lender.
4. On 20.11.2017, a personal guarantee agreement was also executed whereby the personal guarantor extended the guarantee in favour of the petitioner and undertook to repay in case of default by the Corporate Debtor.
5. The Petitioner further submits that the original lender classified the account of the Borrower as a Non-Performing Asset ("**NPA**") on 25.06.2019. Thereafter, the original lender and the Petitioner executed a deed of assignment dated 28.06.2019 whereby all the rights, titles, interests and claims of the original lender with respect to the said loan facility and the Debenture Trust Deed dated 17.11.2017 came to be assigned to the Petitioner.
6. Thereafter, the Petitioner issued a loan recall cum invocation of the guarantee notice dated 28.02.2020, bearing Ref No. EdelARC/4045/2019-20 calling upon the Corporate Debtor, Corporate Guarantors and the Personal Guarantor to jointly and severally pay Rs.86,41,83,258/- (due as payable as on 28.02.20) outstanding towards the Revolving Loan Facility. Despite receiving the said letter, neither a reply nor payment towards the outstanding dues was received from the Corporate Debtor and/or the Corporate Guarantors and/or the Personal Guarantor.
7. Further the Debenture Trustee (Beacon Trusteeship) vide its letter dated 03.03.2020 called upon the Corporate Debtor, Corporate Guarantors and the Personal Guarantor to pay an amount of Rs. 471,48,24,473/- outstanding as on 28.02.2020 with further interests and costs to the

Financial Creditor, as per clause 6 of the Debenture Trust Deed. Despite receiving the said letter, neither any reply nor payment towards the outstanding dues was received from the Corporate Debtor and/or the Corporate Guarantors and/or the Personal Guarantor.

8. In addition to this, the Petitioner issued a demand notice dated 27.10.2021 under Section 13(2) of the SARFAESI Act, 2002 whereby the Borrower and its guarantors were called upon to make the outstanding payment of Rs. 1,42,12,04,955/- for revolving loan facility. A similar notice under Section 13(2) of the SARFAESI Act dated 27.10.2021 was issued by the Debenture Trustee in respect of the dues payable under Debenture Trust Deed, calling upon the Corporate Debtor and its guarantors to repay an amount of Rs. 471,48,24,473/-.
9. Further, a Demand Notice dated 15.11.2021 was issued to the Personal Guarantor as mandated under Section 95 (4)(b) of the Code r/w Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. The said Demand Notice was received by the Guarantor on 16.11.2021. However, the Respondent failed to perform its contractual obligation under the Deed of Guarantee dated 17.11.2017. Hence this Petition.

REPLY BY THE RESPONDENT

10. The Respondent has filed an affidavit in reply controverting the allegations made in Petition.
11. The Respondent submits that the Petitioner is a Secured Financial Creditor, as the Borrower had executed a deed of mortgage in respect of all the rights, title, interest and benefits in respect of its project named 'Sports City'. The distressed value of said Mortgaged Property is not less than Rs. 906,30,00,000/-. In this regard, the Respondent submits that the Petitioner has sufficient security and, thus, the Petitioner has a

proper recourse to recover all the monies due to it. Therefore, the Petition is liable to be dismissed.

12. The Respondent submits that the transaction between the Petitioner and the Respondent is not a loan transaction. Apart from that, the parties to the transaction, by executing security documents, have an understanding about consequence of default and, therefore, the Petitioner by filing the present Petition is disturbing the understanding between the parties.
13. It is also stated that the Borrower and the Respondent are trying to settle the outstanding debt. In this regard, the Respondent and the Borrower had approached one Cushman & Wakefield India Private Limited, a renowned advisory concern, to oversee the sale of one of the Secured Assets. The said appointment was not objected to by the Petitioner. Therefore, the Respondent submits that it is trying to settle the matter with genuine efforts with a view to arrive at an amicable settlement.
14. The Respondent submits that this Tribunal has already admitted a Company Petition against the Borrower i.e. Modella Textile Industries Limited and the CIRP has been initiated against the Borrower, for disputes arising from the same transaction documents. Therefore, the initiation of the CIRP against the Respondent is unwarranted and would be contrary to the settled proposition of law. Apart from that, the Borrower has filed an appeal against the said admission order before the Hon'ble NCLAT, wherein Hon'ble NCLAT is likely to be set aside the said admission Order. Therefore, the Respondent submits that the present Petition should be kept in abeyance until the matter is decided by the Hon'ble NCLAT. Similarly, the issue of initiating parallel proceedings against the Borrower and the Guarantor is sub-judice before the Hon'ble Supreme Court and, therefore, the instant Petition ought to be kept in abeyance.

FINDINGS

15. We have heard the parties and perused the records.
16. The instant Petition has been filed by Edelweiss Asset Reconstruction Company Limited under Section 7 of the Code, for resolution of debt of Rs. 861,72,93,061/-. In the year 2017, a loan facility amounting to Rs. 140,00,00,000/- was advanced by ECL Finance Limited (“**Original Lender**”) to M/s. Modella Textile Industries Limited (“**Borrower**”). Upon the said loan a guarantee dated 17.11.2017 was furnished by several entities including the Corporate Debtor in favour of the original lender. Subsequently, the account of the Corporate Debtor was classified as NPA by the Original Lender on 25.06.2019. Upon the said classification, the Original Lender had executed a deed of assignment dated 28.06.2017 in favour of the Petitioner and thereby assigned all rights, titles, interest with respect to the loan facility in favour of the Petitioner. In view of the account becoming NPA, the Petitioner, after assignment of the debt to it, had issued a notice 28.02.2020 whereby the said loan facility was recalled and the guarantee executed vide the deed of guarantee dated 17.11.2017 came to be invoked. Even after issuance of the said notice, the Corporate Debtor had failed to repay the Guarantee amount. Resultantly, a demand notice dated 27.10.2021 under Section 13 (2) of the SARFAESI Act was also issued.
17. Controverting the allegations made in the Petition, the Respondent in its reply has taken the following defence:
- a. The Petitioner is a Secured Creditor and, therefore, the Petitioner has other means to recover the outstanding dues;
 - b. The CIRP proceeding has been already initiated against the Borrower i.e. Modella Textile Industries Limited, and therefore, there cannot be parallel proceedings against the Borrower and Corporate Guarantor.

18. Upon perusal of the record, it is an undisputed fact that the Borrower had availed the loan facility from the Original Lender. The Respondent has also not denied the fact pertaining to the Deed of Guarantee. Furthermore, there is no dispute relating to the Deed of Assignment through which the Petitioner became entitled to all the rights, interest and title of the Original Lender with respect to the loan in question.
19. As regards to the first contention raised by the Corporate Debtor, a reference can be made to the clause 9 of the Deed of Corporate Guarantee dated 17.11.2017 (Annexure G-6 of the Company Petition), which states that the Guarantee shall be enforceable against the guarantors, notwithstanding any security or securities executed by the borrowers in favour of the Lender. Therefore, the deed of guarantee itself provides that even though the Petitioner had other means or securities to recover the debt, the guarantee will be enforceable. Therefore, this contention raised by the Respondent is not tenable. Furthermore, it is a settled position of law that a Financial creditor can initiate insolvency proceeding against the Corporate Debtor as well as the Corporate Guarantors of the Corporate Debtor under Section 7 of the Code.
20. With regard to the contention pertaining to the initiation of CIRP proceedings against the Corporate Guarantor whilst the CIRP proceeding against the Principal Borrower is pending, it is well settled and has been held by the Hon'ble NCLAT in **State Bank of India Vs. Athena Energy Ventures Private Limited [Company Appeal (AT) (Insolvency) no. 633 of 2020]** that the Financial Creditor can proceed against the Principal Borrower as well as Corporate Guarantors.
21. It has been argued on behalf of the Corporate Guarantor/Respondent that since the principal borrower is already in an advanced stage of CIRP and a Resolution Plan is likely to be approved, the debt of the principal borrower is likely to be resolved and if that happens, the liability of the Corporate Guarantor shall also come to an end and will get extinguished

automatically. Therefore, the Corporate Guarantor should not be admitted into Insolvency as it will be an exercise in futility. The Counsel for the Corporate Debtor has further argued that since the Corporate Guarantor is a going concern, as per the law laid down in **Vidarbha Industries Power Limited Vs. Axis Bank Limited Civil Appeal No. 4633 of 2021; 2022 SCC Online 841** whereby it has been held by the Hon'ble Supreme Court that the Adjudicating Authority has the discretion to reject a petition filed by the Financial Creditor keeping in view the overall health and viability of the Corporate Debtor under its existing management.

22. We have thoughtfully considered the above contentions raised by the Counsel for the Corporate Debtor but have found the same to be not tenable. As stated above, as per the law laid down in State Bank of India Vs. Athena Energy Ventures Private Limited (Supra), the Financial Creditor can proceed simultaneously against the Principal Borrower and the Corporate Guarantor. Therefore, simply because a CIRP is pending against the Principal Borrower or that some Resolution Plan is under consideration, is by itself not a ground to dismiss the Petition filed against the Corporate Guarantor. Similarly, the law laid down in **Vidarbha Industries Power Limited Vs. Axis Bank Limited (supra)** can also not be applied to the facts and circumstances of the instant case considering the fact that there is a huge Financial Debt of Rs. 861.72 Crores which the Petitioner/Financial Creditor is seeking to recover and as per law it is well within the rights of the Financial Creditor to seek the remedy under Section 7 of the Code against the Principal Borrower as well as the Corporate Guarantor.

23. No other points have been argued on behalf of the Respondent/Corporate Guarantor.

24. As a corollary to the forgoing discussion, we come to a conclusion that the nature of Debt is a "Financial Debt" as defined under Section 5 (8)

of the Code in respect of which the default has been committed by the Respondent/Corporate Guarantor. It has also not been disputed that the present has been filed within the period of limitation. Therefore, we find the present Petition to be a fit case for admission under Section 7 of the Code. Accordingly, the Petition is **admitted** in the following terms:

ORDER

- a. The above Company Petition No. (IB) 381 of 2022 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sadguru Multitrade Private Limited**.
- b. This Bench hereby appoints **Mr. Arun Kapoor**, Insolvency Professional, Registration No: IBBI/IPA-003/IP-N00030/2017-18/10230 and having Email Id: arun.kapoor58@yahoo.in as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of **Rs. Five Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. 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 Securitization 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.

- e. 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.
- f. 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.
- g. That 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. 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.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition no. 381 of 2022 is **admitted**.

1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)