

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/632/ (IB)/2017

Under Section 7 of the IBC, 2016

In the matter of

M/s. EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED

V/s

M/s. AML POWER AND STEEL LIMITED

Order delivered on: 12.03.2018

CORAM

**K. ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

Parties Present:

For the Petitioner : Shri. Srinath Sridevan, Advocate

*For the Respondent : Shri. R.Sankar Narayanan, Senior Advocate &
Shri. Jayesh B. Dolia for Aiyarand Dolia*

ORDER

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

1. Under consideration is a Company Petition filed by M/s. Edelweiss Asset Reconstruction Company Limited (**in short Petitioner/Financial Creditor**) against M/s. AML Power and Steel Limited (**in short Respondent/Corporate Debtor**), a company registered under the Companies Act, 1956 having its registered office at New No. 9 (Old No.3), Gopalapuram, 6th Main Street, Chennai – 600 086, under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code 2016) r/w Rule 4 of the Insolvency & Bankruptcy



(Application to Adjudicating Authority) Rules, 2016 (in short 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 learned Counsel for the Petitioner/Financial Creditor submitted that the Corporate Debtor availed loans of Rs.23, 75, 00,000/- towards Term Loan and Cash credit from the Consortium of Banks consisting of Central Bank of India, State Bank of India, State Bank of Travancore (now SBI) UCO bank, IDBI Bank and ARCIL) and there was a Master Restructuring Agreement dated 30.08.2011 was entered into between the Consortium of Banks and the Corporate Debtor.

4. The Petitioner/Financial Creditor being the Trustee (acting in its capacity as a Trustee on behalf of the EARC Trust SC 49) acquired all the rights, title and interest in relation of the UCO Bank in accordance with the Assignment Agreement dated 30.06.2014 and thus the Trustee became a financial creditor of the Corporate Debtor.

5. On 26.04.2010, the loans have become NPA and as on 31.10.2017, the total outstanding was Rs.61,27, 33,907/- repayable towards Term Loan, Cash Credit, Working Capital Term Loan, and Funded Interest Term Loan. Since the Company failed to repay the dues



as per the repayment schedule and also at the cure period, the Petitioner/Financial Creditor cancelled the Restructuring Agreement by its letter 20.01.2017 and issued notice dated 10.02.2017 under Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT) for an outstanding amount of Rs.214, 27,00,000/-. The learned Counsel for the petitioner/Financial Creditor submitted that the Respondent/Corporate Debtor is unable to pay its debts and therefore it has no other option except approaching this Adjudicating Authority under I & B Code seeking an order for commencing the Corporate Resolution Process and prayed for an appointment of IRP to take over the affairs of the Respondent/Corporate Debtor.

6. The learned Senior Counsel for the Respondent/Corporate Debtor submitted that it is fact that the Respondent/Corporate Debtor availed the loans from consortium of banks and also defaulted from making payment. He submitted that the Corporate Debtor constructed a steel plant in Jharkhand encompassing an area of 60.34 acres and the commercial production of the plant was began in the year 2007. A Master Restructuring Agreement was entered into between the consortium of banks and the Corporate Debtor on 30.08.2011, however, the consortium of banks failed to disburse the working capital in terms of



the agreement and the effective working capital was not sufficient for restructuring and reviving the Corporate debtor in an effective manner. Therefore, the Corporate Debtor becomes a sick Company and it was referred to BIFR and no revival plan could be structured and the Corporate Debtor ceased to function from the year 2014.

7. The petitioner/financial creditor issued SARFAESI notice and have taken the symbolic possession of the assets of the Company. The petitioner/FC filed a Sale Application before DRT and the DRT has passed an order of stay preventing further proceedings regarding the sale of the property. At that stage the petitioner invoked the provisions of the I & B Code and filed the present petition. The Respondent brought to the notice of this Adjudicating Authority that the petitioner cannot proceed with two parallel proceedings. The Respondent has also filed a memo before DRT stating that they are withdrawing the appeal in relation to the orders of DRT for SARFAESI proceedings with a view that the Respondent Bank would not proceed for any action under I& B Code. However, the petitioner failed to withdraw the present proceedings. The petitioner is estopped from reverting back on their stand at this point of time after withdrawal of the SARFAESI appeal by the Respondent. The petitioner by its conduct made this Respondent to believe that the matter has come to an end and that they would continue with the company



petition before this Adjudicating Authority and bring the property for sale only under the SARFAESI and the Respondent is willing to handover the possession to them to proceed under SARFAESI.

8. *In the matter of Union Bank of India Vs. Era Infra Engineering Limited (IB) – 190(PB)/2017 under Sec.7 of the IBC 2016 it has been held that the pendency of a case before the Hon'ble High Court will not be a bar for National Company Law Tribunal to proceed with the admission of petition under IBC 2016 in terms of the Hon'ble National Company Law Tribunal Principal benches order unless an official liquidator has been appointed under a winding up order is passed. Thus there is no bar on NCLT to trigger an Insolvency Resolution Process on an application filed under Sections 7, 9 & 10 if a winding up petition is pending unless an official liquidator has been appointed and a winding up order is passed.*

This order of the Hon'ble Principal Bench is mutatis mutandis applicable to proceedings before the DRT also.

9. It is an admitted fact that the Respondent Company has no other assets other than the land encompassing 60.34 acres with factory building, plant and machinery in Jharkhand and it is also admitted fact that the Corporate Debtor could not be revived. It is also an admitted fact that any resolution plan is impossible as both the parties agree that the Corporate Debtor could not be revived and it has to be closed. The only asset of the Corporate Debtor has to be sold and dues to the Financial Creditor are appropriated and remaining money to be distributed to the other stake holders. Therefore, sale of the only asset and preservation of the only asset are mutually exclusive reliefs. Hence it is hit by doctrine of election.



10. In support of his submissions the learned Senior Counsel for the Respondent/CD has placed the case laws:

(i) AIR 1956 SC 593 – Nagubai Ammal Vs B. Shama Rao wherein it has been held that a person cannot approbate and reprobate is only one application of the doctrine of elections and that is operation must be confined to reliefs, claims in respect of the same transaction and to the persons who are parties there to,

(ii) 2006 2 SCC 641 – National Insurance Company Limited Vs Mastan and others wherein the same principle was reiterated,

(iii) 2017 SCC Online Ker 21718 – Babu Kesavan and others VS Prakasan wherein it is held that a person is put to election between alternative and inconsistent course of conduct

(iv) 2008 1 SCC 125 – Transcore Vs Union of India wherein the same principle is reiterated and

(v) AIR 1979 SC 621 – Motilal Padampat Sugar Mills Co Limited Vs State of UP wherein it has been held that once a promise is made to change his stand to his detriment on promise made by the promisor, then the promisor should not be allowed to go back on that promise.

11. Submitting the above the learned Senior Counsel for the Respondent stated that the present application is not maintainable and prayed to pass orders for expediting the sale of the property and settle the dues.

12. Heard both sides and perused the records.

13. It is an admitted fact that the Respondent/Corporate Debtor availed various loans from the consortium of banks which was legally assigned to the petitioner/Financial Creditor herein and the learned Senior

Counsel also admitted that the Corporate Debtor failed to repay its debts.



The only grievance of the Corporate Debtor is that at this stage appointing an Interim Resolution Professional is a futile exercise as both the Petitioner/Financial Creditor and Respondent/Corporate Debtor admitted that the Company could not be revived. The only option is to dispose of the property of the Company on a transparent manner.

14. Now it is for decision whether the Corporate Debtor failed to repay its debts to the Financial Creditor or not. In the present case the Corporate Debtor itself admitted its failure to repay the debts and that there is no feasibility of reviving the Company and the assets are to be sold and it is to be appropriated by the Financial Creditor and the remaining has to be distributed to the other stake holders. It is also a fact that the demand under the SARFAESI notice was Rs. Rs. 214, 27,00,000/- and the estimated value of the properties of the Company as per the Financial Creditor is only Rs. 62,85,70,000/-. In view of the above it is essential that a Resolution Professional has to be appointed to manage the affairs of the Company and to bring the same to a logical conclusion and the Financial Creditor has also proved by placing overwhelming evidence that there has been a failure on the part of the corporate debtor which the Corporate Debtor has also accepted. Therefore, the submissions made on behalf of the Respondent/Corporate Debtor are not on a valid ground for rejection of the present petition and



the case laws relied by the Respondent are not applicable to the present case as the facts and circumstances are otherwise.

15. The petitioner/Financial Creditor has complied with all the requirements stipulated under the provisions of the I & B Code, 2016 and the Rules framed there under.

16. In these circumstances, we are inclined to admit the instant petition.

17. The instant petition is admitted and we order the commencement of the Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor which shall ordinarily get completed within 180 days reckoning from the day this order is passed.

18. We appoint Mr. Santanu T Ray of AAA Insolvency Professionals LLP as Interim Resolution Professional proposed by the Financial Creditor. 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 the copy of this order is received and call for submissions of claims in the manner prescribed.



19. We declare the moratorium which shall have effect from the date of this order till the completion of corporate insolvency resolution process for the purpose of referred to in section 14 of the I & B Code, 2016. We 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 Securitization 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.

20. 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 414 shall not apply to such transactions, as notified by the Central Government.

21. The IRP so appointed 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.

22. The petitioner/Financial Creditor as well as the Registry is directed to send the copy of this order to IRP on his appointment 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.

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

With the above directions the petition is allowed.




(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)



(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)



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