

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1164/MB-IV/2020

Under Section 7 of the IBC, 2016

In the matter of

EDELWEISS ASSET
RECONSTRUCTION COMPANY
LIMITED.

[CIN: U67100MH2007PLC174759]

...Financial Creditor

v/s.

PERFECT ENGINEERING
PRODUCTS LIMITED

[CIN: U28920MH1964PLC012880]

...Corporate Debtor

Order Delivered on: 06.06.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Financial Creditor:

Mr. Tushad Cooper, Ld Sr.
Counsel a/w Mr. Bhalchandra
Palav, Drishti Doshi and Mr.
Aniket Dighe i/b Bhal & Co.

For the Corporate Debtor:

Mr. Mukesh Jain a/w PCA
Ayush J. Rajani and Ms.
Khusbhoo Shah i/b AKR
Advisors, Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being CP (IB) No.1164/MB-IV/2020 filed by Edelweiss Asset Reconstruction Company Limited, the Financial Creditor/Applicant, filed on 06.08.2020 under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Perfect Engineering Products Private Limited, Corporate Debtor.

1.1. The financial creditor has claimed a default of Rs.4,17,44,20,450/- (Rupees Four hundred and Seventeen Crores, Forty-Four Lakh, Twenty Thousand, Four Hundred and Fifty Only) as on 15.07.2020, the details of which are as follows –

(Amount in Rs).

Facilities	Principal	Conversion of Debt into Equity	Closing Principal	Interest	Penal Interest	Total Dues
10928872226- DCC	55,06,87,287	11,63,07,207	43,43,80,080	1,82,90,71,836	15,35,99,520	2,41,70,51,436
10928872555- EPC	10,26,02,363	2,16,70,001	8,09,32,362	31,47,58,571	2,85,85,513	42,42,76,446
30207413591- TL-1	8,69,31,368	1,83,60,229	6,85,71,139	31,41,64,887	2,59,29,567	40,86,65,593
30630647550- TL-2	11,84,91,184	2,50,25,780	9,34,65,404	42,79,07,775	3,53,17,464	55,66,90,644
31110064888- WCTL-1	4,11,85,752	86,98,584	3,24,87,168	14,80,08,330	1,24,20,589	19,29,16,086
31110144970- WCTL-2	4,11,36,578	86,88,199	3,24,48,379	13,13,38,398	1,10,33,467	17,48,20,244
TOTAL	94,10,34,532	19,87,50,000	74,22,84,532	3,16,52,49,798	26,68,86,120	4,17,44,20,450

- 1.2. This default is stated to have been committed by the Corporate debtor on 17.09.2009 and the account was declared as NPA on 31.03.2009 in the books of State of Bank of India, who was the original lender. Thereafter, another default based on restructuring is stated to have occurred on various dates during the period 30.06.2017 to 31.03.2018 as stated in column 2 of part IV of the application.
2. The Corporate Debtor has filed reply dated 17th January 2023; and written submissions dated 03.02.2023 & dated 10.04.2023 stating that –
- 2.1. The Applicant is guilty of “*suppression vary suggestion falsi*” and this Application deserves to be dismissed for this reason alone.
- 2.2. At Para 2, Part IV, Form 1 (Pg. 5, Vol 1) of the Petition, the date of alleged default is 17.9.2009. Consequently, the date of declaration of the account of the Corporate Debtor by the predecessor of the Financial Creditor i.e. State Bank of India would be 17.12.2009. The said date is also set out in notice dated 13.2.2013 (Exhibit J-2 to the Petition) issued by SBI u/s 13(2) of SARFAESI. However, as per NEsL notice (Exhibit F-15, Pg. 220, Vol 2 of the Petition) it is 28.6.2012. Yet again a fresh date of default is engineered between 30.6.2017 to 31.3.2018 purportedly under the restructuring package as is set out in Pg. 5-6, Part IV, Vol-1 of the Petition. Such is the state of indecisiveness of the Financial Creditor and the frivolity of the entire claim. The incidence of default is of critical importance for the purpose of maintaining a Petition u/s 7 or 9 of the Code. Multiple dates and amounts of default set out by the Financial Creditor clearly

show that the Financial Creditor is not clear about the incidence of default itself and has filed this Petition solely for the purpose of taking its chances.

2.3. There is no default on the part of the Corporate Debtor under the restructuring packages which fact is also borne out by the CIBIL Report cited above. In letter dated 03.06.2020, 02.07.2020 and 13.7.2020, instead of rendering support during Covid 19, the Financial Creditor threatened forensic audit. The Corporate Debtor did not react as it is prerogative of the Financial Creditor to undertake any audit. While no assistance was forthcoming under Covid 19 package, notice u/s 13(4) of SARFAESI was issued on 1.12.2022 for symbolic possession of the property of the Corporate Debtor and its associates having been taken on 21.11.2022 and the same was also published in local newspapers on 21.11.2022.

2.4. It is indisputable that restructuring package of Rs. 192.50 crores were approved by the Financial Creditor and accepted by the Corporate Debtor and its associates on 7.11.2014. It is also the admitted position of the Financial Creditor that the said package was unilaterally revoked by the Financial Creditor on 22.9.2016. A fresh package was sanctioned by the Financial Creditor on 30.6.2017. On 27.9.2016, the Financial Creditor took possession of the Thane Land pursuant to the restructuring package of 7.11.2014. On one hand the restructuring package is allegedly revoked. On the other hand, the benefits of the allegedly revoked restructuring package are availed by the Financial Creditor with impunity. It is submitted that it was up to the Financial Creditor to nominate a bank for opening the TRA

Account. It was also entirely in the purview of the Financial Creditor. It is nobody's case that the Financial Creditor sought to exercise the above rights and the Corporate Debtor demurred.

2.5. The restructuring package of Rs. 192.50 crores comprised 2 parts namely settlement of a sum of Rs. 115 crores through transfer/sale of assets and issue of fresh equity. It is undisputed that the said part of the restructuring package which comprised about 60% of the total value of the package has been effectuated. The remaining part of the package was carved out in to an interest free term loan required to be repaid only from the operational cash flows of the Corporate Debtor and its associates. An illustrative repayment schedule based on the projected cash flows was appended to the said restructuring package. However, there was no stipulation for the promoters or the Corporate Debtor to infuse any funds from their own sources for meeting any shortfall from operational cashflows.

2.6. The said Consent Terms were filed pursuant to the second restructuring package and were based thereon. The Financial Creditor has withheld the said Consent Terms in the present Petition for reasons best known to the Financial Creditor.

2.7. The Corporate Debtor is a MSME, having huge accreditations, which may fall through if CIRP is admitted.

2.8. The Petitioner holds 13.5% shares of the Corporate Debtor and stands to lose if the Corporate Debtor finally goes into liquidation.

- 2.9. The Corporate Debtor has also relied upon the decisions in the case *Vidarbha Industries Power Limited vs. Axis Bank (2022) SCC Online SC 84* to contend that the NCLT has a discretion while dealing with applications under Section 7; *Swiss Ribbons Pvt Ltd & Anr vs Union of India & Ors (2019) 4 SCC 17* to contend that CIRP proceedings are not adversarial to the Corporate Debtor and not a mere recovery litigation for creditors; *Ocean Diety Investment Holdings Ltd vs. Suraksha Asset Reconstruction Limited (2022) ibclaw.in 698 NCLAT* to contend that the Adjudicating Authority has the jurisdiction to enquire into allegations of fraud when there is a prima-facie case of fraudulent initiation of CIRP; *S. P. Chengalvaraya Naidu (Dead) by LRS vs. Jagannath (Dead) by LRS. And Others (1994) 1 SCC* to contend that withholding of information from the knowledge of the Court is a fraud on Court.
3. The Financial Creditor has filed a brief Note on submissions dated 13.04.2023 contending that the captioned Petition is connected to the other petition CP-(IB) 1166/2020, which was filed by the Petitioner against the group companies i.e. Perfect Engine Components Private Limited and the Corporate Debtor is guarantor to the loan to that group company also, and the facts in both the cases are identical and pertain to same transaction and documents. Another Petition in the case of second Corporate Guarantor (Karla Engine Components Limited) to the Principal Borrower has been heard and reserved for Orders on 23.03.2023 by Hon'ble NCLT Mumbai, Bench V. Though, the present petition is filed for the default committed by Corporate Debtor in relation to its principal borrowing, the defenses raised by the Respondent/Group Company in all the Petitions are exactly similar and are required to be

outrightly rejected and the present Petition be admitted for the reasons mentioned herein.

3.1. It is further submitted that the CP-(IB) 1166/2020 was initially dismissed on ground of limitation, however, the NCLAT reversed the order and the order of NCLAT was subsequently confirmed by Hon'ble SC vide order dated 17.2.2023. Hence, the issue of limitation is no longer res integra. It is also submitted that there is a pronounced and dishonest disinclination by the CD to meet obligation by raising frivolous and untenable defenses. The similar defenses taken up in case of Principal Borrower were considered by Bench V of Mumbai, NCLT and finally that petition i.e. CP-(IB) 1166/2020 came to be admitted.

3.2. The FC has also filed a copy of order dated 17.2.2023 passed by the Apex Court in the case of "*Perfect Engine Components Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Limited [Civil Appeal No. 492 of 2023]*", wherein the Hon'ble Supreme Court held that "*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*".

4. The Corporate Debtor has filed another written submission dated 17.04.2023 to bring on record information withheld by the Financial Creditor from the Adjudicating Authority stating that the applicant has

withheld the fact of criminal investigation conducted by EOW Mumbai Police; the fact that FC acted as intermediary for assisting CD for working out a OTS proposal for SBI; and various emails relating to such act of intermediation.

5. This bench heard the Counsel and perused the material available on record.

5.1. It is not in dispute that the Corporate Debtor owes the financial debt in excess of Rs.1 Crore; there exist a default in repayment thereof; the Corporate Debtor is also a guarantor to the creditor facilities availed by M/s Perfect Engine Components Limited; the Corporate Debtor and the said group company i.e. M/s Perfect Engine Components Limited entered into restructuring proposal; and the facts in this case and in the case of M/s Perfect Engine Components Limited are similar.

5.2. This bench finds that the issue of limitation is no longer remains in view of the order of NCLAT, subsequently confirmed by Hon'ble SC vide order dated 17.2.2023, in case of M/s Perfect Engine Components Limited, where the facts are similar to the present case.

5.3. It may be noted that the Judgment in *Vidarbha Industries Power Limited vs Axis Bank [(2022) SCC Online SC 841]* was taken into review by *Axis Bank Limited [(2022) SCC Online SC 1339]* and it was observed by the Hon'ble SC that the Judgment in Vidarbha was decided on the basis of the case in hand and that “*it is well settled that the judgments and observations in judgments are not to be read as provision of statue. Judicial utterances and/or pronouncements are in the context of particular facts of the*

*case.” Further, the Hon’ble Supreme Court has again reiterated in the case of [M. Suresh Kumar Reddy Vs. Canara Bank & Ors. \(2023\) ibclaw.in 67 SC](#) that “Thus, it was clarified by the order in review that the decision in the case of *Vidarbha Industries* was in the setting of facts of the case before this Court. Hence, the decision in the case of *Vidarbha Industries* cannot be read and understood as taking a view which is contrary to the view taken in the cases of *Innoventive Industries* and *E.S. Krishnamurthy*.” It was further held therein that “Even assuming that NCLT has the power to reject the application under Section 7 if there were good reasons to do so, in the facts of the case, the conduct of the appellant is such that no such good reason existed on the basis of which NCLT could have denied admission of the application under Section 7”.*

5.4. This bench finds that, the Hon’ble NCLAT in *Punjab National Bank vs Vindhya Cereals Pvt Ltd [2020 SCC Online 957]* has expressly held that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under the I&B Code.

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

5.6. Further, with regard to the claim of the Corporate Debtor that the Restructuring package offered by the Petitioner to the Group Companies of Respondent [(Perfect Engineering Products Private

Limited, Perfect Engine Component Private Limited and Karla Engine Component Limited] is a debt recovery exercise is frivolous and baseless. In this connection it is pertinent to note that the petitioning creditor had, after the debt of the Corporate Debtor had been assigned to it in 2014, entered into an arrangement of restructuring of the debt on two separate occasions i.e. on 7.11.2014 and 30.6.2017 with a bona fide intention. The said restructuring package was offered twice to the Corporate Debtor on 07.11.2014 and 30.06.2017 with bonafide intention. However, the Corporate Debtor defaulted on each of the occasion to repay the amount payable under the Restructuring Package.

5.7. The Petitioner, vide its Letter dated 01.06.2018, revoked the said Restructuring Letter due to a default on part of the Corporate Debtor in honouring the payment terms as stated in the Restructuring Letter. This revocation by the Petitioner was done as per one of the terms of the Restructuring Letter dated 30.06.2017 which stated that “*in case of non-compliance of any of the terms of restructuring, EARC has the right to unilaterally revoke the restructuring and the original liabilities of the companies will be restored along with further interest and costs and adjustment shall be made of the payments made till that time*”.

6. Considering the facts placed before us and the fact that, the Corporate Debtor owes the financial debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, this bench is of the view, that the present

case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

7. The Petitioner had earlier proposed the name of Mr. Satyen Saraswat as the proposed Interim Resolution Professional ("IRP"). However, the Applicant has filed an addition affidavit dated 13.04.2023 to substitute the above proposed IRP with M/s. ARCK Resolution Professionals who have given their consent form dated 24.03.2023 and their Registration Certificate.

ORDER

8. The petition bearing CP (IB) No.1164/MB-IV/2020 filed by, filed by Edelweiss Asset Reconstruction Company Limited, the Financial Creditor/Applicant, filed on 06.08.2020 under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Perfect Engineering Products Private Limited, Corporate Debtor is **admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (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 Debtor 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints ARCK Resolution Professionals LLP, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPE-0030/IPA-1/2022-2023/50013 and email- insolvency@arck.in . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out

of this fund, are subject to approval by the Committee of Creditors (CoC).

- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
06.06.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)