

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

3. I.A. 1930/2020

IN

C.P.(IB)-935(MB)/2020

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **06.05.2022**

NAME OF THE PARTIES: Edelweiss Asset Reconstruction

Company Limited

V/S

Smaaash Entertainment Private Limited

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Rahul Dev, counsel appearing for the Petitioner, Mr. Rafeeqe, counsel appearing for the Corporate Debtor are present through virtual hearing.

Order pronounced in the open court vide separate order. In the result, the above I.A. is infructuous and Company petition is allowed, Mr. Bhrugesh Amin is appointed as IRP.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

SKS

Sd/-
H.V.SUBBA RAO
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

**I.A. 1930/2020
IN
C.P. No. 935/IBC/2020**

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

Edelweiss Asset Reconstruction

(CIN: U65991MH2001GOI131154)

A Company incorporated under the Companies Act, 1956, and registered as an Asset Reconstruction Company pursuant to Section 3 of the Securitisation and Reconstructions of Financial Assets and Enforcement of Financial Assets and Enforcement of Security Assets and Enforcement of Security Interest Act, 2002, acting as a Trustee of EARC trust SC 384, having its Registered Office at Edelweiss House, Off CST Road, Kalina, Mumbai - 400098

.....Applicant/Financial Creditor

Vs

**Smaaash Entertainment Private
Limited**

(CIN: U92413MH2009PTC197424)



A Company incorporated under the Companies Act, 1956 and having its Registered Office at: 2nd Floor, Trade View Building, Oasis Complex PB Marg, Lower Parel, Mumbai, Maharashtra - 400013

.....**Corporate Debtor**

Order delivered on: 06.05.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Rahul Dev, Advocate

For the Respondent: Mr. Aniket Worlikar, Advocate

Per: Shri Chandra Bhan Singh, Member (Technical)

1. This Company petition is filed by Edelweiss Asset Reconstruction (hereinafter called "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Smaaash Entertainment Private Limited (hereinafter called "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a resolution of an unresolved Financial Debt of Rs. 292,47,30,442/- (Rupees Two Hundred Ninety Two Crores Forty Seven Lakhs Thirty Thousand Four Hundred Forty Two Only).



2. The brief submissions of the Financial Creditor are as follows:-
- i. The Financial Creditor with a view to refinance the existing debts, general corporate purposes and for purpose of acquisition of shares, the Corporate Debtor issued 14.75% secured redeemable non-convertible debentures at par with face value of Rs. 10,00,000/- (Rupees Ten Lakhs) per debenture for an aggregate amount of Rs. 280,00,00,000/- (Rupees Two Hundred and Eighty Crores) on a private placement basis in two tranches:
 - a. The First Tranche of up to Rs. 258,00,00,000/- (Rupees Two Hundred and Fifty Eight Crores) and,
 - b. The Second Tranche of up to Rs. 22,00,00,000/- (Twenty Two Crores) (hereinafter "**Debentures**").
 - ii. The Financial Creditor further submits that on 17.08.2017 and 15.01.2018, the debentures were issued to ECL Finance Limited, the Assignor of Debentures to the Financial Creditor, on the principal terms and conditions contained in the Debenture Trust Deed dated 17.08.2019 (amended vide First Supplemental Deed dated 15.01.2019) executed between the Corporate Debtor and Catalyst Trusteeship Limited, as Debenture Trustee.
 - iii. The Debentures were allotted to ECL Finance Limited on 05.09.2017 and 20.12.2017. Further, various security agreements between August, 2017 to September, 2018 were entered into between various parties and the Debenture Trustee *inter alia* for the



- purpose of creating security interest for repayment of Debentures.
- iv. The Financial Creditor further submits that, between 05.03.2019 to 31.07.2019 various letter were issued addressed by Debenture Trustee calling upon the Corporate Debtor and the Guarantors to abide by the terms of issuance of Debentures.
- v. Further the Corporate Debtor defaulted in payment of monthly interest under the terms of the issue of Debentures and account was declared as NPA.
- vi. As on 28.05.2019, the Corporate Debtor has to pay to the Financial Creditor an amount of Rs. 292,47,30,442/- (Rupees Two Hundred Ninety Two Crores Forty Seven Lakhs Thirty Thousand Four Hundred Forty Two Only). The Financial Creditor is filed the present petitioner under Section 7 of the code as the Corporate Debtor had defaulted in payment their dues to the Financial Creditor.
3. The Corporate Debtor has on the contrary, denied all the averments and allegations raised by the Financial Creditor. The contentions of the Corporate Debtor are summed up as follows:
- i. The Corporate Debtor submitted in his reply that on of the signatory to this Company Petition being one Parnika Bhatia is not duly authorized to file the Company Petition on behalf of the Financial Creditor. The Financial Creditor has contended that the above Company Petition has been filed in its capacity as the Trustee of the Financial Creditor. However, it is pertinent to note that the Financial Creditor has



produced a Board Resolution dated 29.01.2020 passed by the Financial Creditor while acting as the trustee of the EARC Trust SC 384. The Corporate Debtor further submits that there is no document produced by the Financial Creditor evidencing that the Financial Creditor was authorized to further delegate its power/duties as a Trustee to any individual including Parnika Bhatia.

- ii. The Corporate Debtor submits that on perusal of the Assignment Agreement dated 28.06.2019, the alleged outstanding dues of the Financial Creditor were acquired by EARC Trust SC 384. The EARC Trust SC 384 continued to be the repository of the alleged debts of the Corporate Debtor not the Financial Creditor. In these circumstances the assertion that the Petitioner is a Financial Creditor is *ex facie* inaccurate.
- iii. The Corporate Debtor further submits that this application is filed by the Corporate Insolvency Resolution Process in respect of the Corporate Debtor *inter alia* on the basis of an alleged claim which has become due from the Corporate Debtor subsequent to 25.03.2020. The tabulation of the Petitioner claim explicitly states that the amount set forth therein is allegedly due and payable to the Petitioner as on 30.04.2020 i.e. subsequent to 25.03.2020. Therefore, as per Section 10A of the Insolvency and Bankruptcy Code, 2016, no application for initiation of the Corporate Insolvency Resolution Process of a Corporate Debtor can be filed, for a default arising on or after 25.03.2020



for a period of six months or such further period. Not exceeding one year from such date.

- iv. It is further submitted that the Petitioner has failed and neglected to produce any Statement of Accounts to evidence the computation of its claim. Certain Debentures of the Petitioner were issued by the Corporate Debtor to one ECL Finance Limited in and around 2017 and that the said debentures were assigned by the ECL Finance Limited to the Petitioner *vide* an Assignment Agreement dated 28.06.2019. It is further submitted that on 15.06.2019, a total amount of Rs. 43,86,81,115 (Rupees Forty Three Crores Eighty Six Lakhs Eighty one Thousand One Hundred and Fifteen Only) was outstanding to ECL Financial Limited from the Corporate Debtor but no documents has been produced by the Petitioner evidencing the same.
- v. The Corporate Debtor further submits that the above Company Petition has not accompanied the requisite documents as mentioned in Form I of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as per entry number 7 to Part V of Form I, an application to initiate the Corporate Insolvency Resolution Process against a corporate debtor by a financial creditor is required to be accompanied with 'Copies of entries in a banker book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891)'. The claim of the Petitioner to the extent of Rs. 43,86,81,115 (Rupees Forty Three Crores Eighty Six Lakhs Eighty one Thousand One Hundred and Fifteen Only) as on 15.06.2019 is not supported by any Statement of



Account maintained by ECL Finance Limited evidencing the manner in which the said amount was computed. The remainder claim of the Petitioner has sought to rely on a Statement of Account allegedly maintained by the Petitioner in respect of the account of the Corporate Debtor and the accuracy of the said Statement of Account would necessarily be contingent on the Statement of Account maintained by ECL Finance Limited and even the said Statement of Account maintained by the Petitioner is not accompanied by the requisite certificate under the Bankers Books Evidence Act, 1891. Therefore, the financial debt claimed by the Petitioner is not proved in accordance with the Insolvency and Bankruptcy Code, 2016 and regulations thereunder.

- vi. The Corporate Debtor submits that the Company Petition is filed on the basis of a Debenture Trust Deed dated 17.08.2017 under which alleged certain amounts were advanced to the Corporate Debtor, which is insufficiently stamped. The Debenture Trust Deed dated 17.08.2017 is stamped with an amount of Rs. 500 (Rupees Five Hundred Only) while the obligation allegedly created thereunder is for an amount of Rs. 280,00,00,000 (Rupees Two Hundred and Eight Crores Only). Therefore, the submitted instrument cannot be acted upon by any adjudicatory authority including this Hon'ble Tribunal.
- vii. Hence, as this Company Petition ought to be dismissed since the same is neither duly instituted on behalf of the EARC Trust SC 384, nor supported by documents to



evidence the debt and default alleged to have committed by the Corporate Debtor in repaying the alleged outstanding due to the Petitioner on this ground along the Company Petition ought to be dismissed.

FINDINGS

1. This Bench heard the Learned Counsel for the Petitioner, Mr. Rahul Dev and the Learned Counsel for the Corporate Debtor, Mr. Aniket Worlikar through virtual hearing on 15.03.2022 and had reserved the matter for "Orders".
2. The Learned Counsel appearing for the Financial Creditor submitted his arguments in the light of pleadings. He submits that the Corporate Debtor issued 14.75% secured redeemable non-convertible debentures dated 17.08.2017 (amended *vide* First Supplemental Deed dated 15.01.2018) with face value of Rs. 10,00,000/- (Rupees Ten lakhs) each for an aggregate amount of Rs. 280,00,00,000/- (Rupees Two hundred and Eighty Crores) on a private placement basis in two tranches:
 - a. The First Tranche of up to Rs. 258,00,00,000/- (Rupees Two Hundred and Fifty Eight Crores) and
 - b. The Second Tranche of up to Rs. 22,00,00,000/- (Rupees Twenty Two Crores)
3. The Learned Counsel appearing for the Financial Creditor submitted in his argument that the monthly interest for Tranche I Debentures and the Tranche II was payable by the Corporate Debtor at the end of every calendar month. The Corporate Debtor defaulted in payment of the Running Coupon from 28.05.2019 thereby constituting an Event of Default under clause 5 of the Debenture Trust Deed. The



Debentures issued to ECL Finance Limited under the Debenture Trust Deed together with all its rights, title and interest and underlying security interests thereon were assigned by ECL Finance Limited in favour of the Financial Creditor *vide* an Assignment Agreement dated 28.06.2019. The Corporate Debtor has not raised any dispute and/or demur on the factum of issuance of Debentures, which are subscribed by the Debenture Holders. Further, the Corporate Debtor has specifically acknowledged the existence of debt payable to the Financial Creditor dated 15.06.2019 and the date of default being 28.05.2019. The Counsel for Financial Creditor also stated that he even sent an email to the Corporate Debtor on 30.04.2020 specifically mentioning the existence of debt payable by the Corporate Debtor to the Financial Creditor as on 15.06.2019 (date of default being 28.05.2019) which was duly acknowledged by the Corporate Debtor.

4. This Bench notes that the Financial Creditor in its petition has clearly mentioned that the Petitioner is acting in its capacity as trustee of EARC Trust SC 384, therefore the Trust is bound to perform all its actions, including initiating legal proceedings, though its trustee. Further, the Ministry of Corporate Affairs, on 27.02.2019 issued a notification stating that a trustee is entitled to file an application for initiating CIRP against a Corporate Debtor on behalf of the Financial Creditor. The Financial Creditor being a body corporate, is bound to act through its authorized representatives for all purposes and accordingly *vide* Board Resolution dated 29.01.2020, the Financial Creditor had authorized Ms. Parnika Bhatia to institute or



defend legal proceedings on behalf of the Financial Creditor.

5. It is clear in this matter that the default on the part of the Corporate Debtor to pay the monies to the Financial Creditor occurred on 28.05.2019 i.e. the date on which the monthly interest on the Debentures became due and payable by the Corporate Debtor. The said default is also acknowledged in audited consolidated financials for the Financial Year 2018-19 of the Corporate Debtor. The Bench notes that the present Petition is for a period prior to 25.03.2020 and the Section 10A of the Code is applicable only where the default arises on or after 25.03.2020.
6. The Bench notes that the provisions of the Bankers' Books Evidence Act, 1891 is not applicable on the Financial Creditor as the Statement of Accounts maintained by the Petitioner clearly mentions the total outstanding amounts including the principal outstanding, interest and penal interest accrued along with the rate of interest. The Financial Debt is duly substantiated by the Statement of Accounts. Further, the outstanding amount payable by the Corporate Debtor in favour of ECL Finance Limited is also acknowledged in audited consolidated financials for Financial year 2018-19 of the Corporate Debtor.
7. Further the Debenture Trust Deed and all other financing/security documents are duly stamped as per the provisions of Indian Stamps Act, 1899 and it is a settled principle of law that this Tribunal is only required to consider whether there is an existing debt and default on the part of the Corporate Debtor. Sufficient documents have been placed on record in the present proceedings



evidencing debt and default on the part of the Corporate Debtor apart from the allegedly insufficiently stamped documents.

8. The Bench notes that the debentures were issued by the Corporate Debtor on a private placement basis to ECL Finance Limited, the Debenture Holder. The Debenture Trustee under the Debenture Trust Deed is to act for the benefit of the Debenture Holders. The Debenture Trustee has been granted various powers under the Debenture Trust Deed, which it is bound to exercise on behalf of and for the benefit of the Financial Creditor as the sole Debenture Holder. It is further submitted that powers granted to Debenture Trustee under the Debenture Trust Deed cannot and does not impede the rights of the Debenture Holder to take certain steps on its own for protecting its interest. This mere fact of Catalyst being a Debenture Trustee, does not dilute the Creditor-Debtor relationship between the Debenture Holder and the Issuer. It is further submitted that the facts of the present case being a beneficiary created under a trust, the Debenture Holder who is a Petitioner is entitled to file the captioned proceeding for the financial debt owed by the Corporate Debtor even though the Debenture Holder may not directly be a party to the Debenture Trust Deed.
9. As discussed above, the “debt” and “default” are clearly established in this case and the debt is also within limitation. The application is complete in all respects and the Financial Creditor also suggested the name of Mr. Bhrugesh Amin as Interim Resolution Profession along with his consent letter with the application. Thus, the



present Company Petition satisfies all the necessary legal requirements for admission.

10. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) – 935/2020 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Smaaash Entertainment Private Limited.
- b. This Bench hereby appoints **Mr. Bhrugesh Amin**, Insolvency Professional, Registration No: IBBI/IPA-002/IPN00353/20172018/11003 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. 5 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. 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 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.

Accordingly, this Petition is **allowed**.

IA 1930/2020

IA 1930/2020 has been filed in CP(IB)-935/(MB)/2020 by the Petitioner regarding urgent hearing of the main Company Petition CP 935/2020 and also praying for an interim Order by this Bench restraining the Corporate Debtor from disposing of, alienating, transferring and selling any asset of the Corporate Debtor Company. Since the Bench has **“Admitted”** the main Company Petition No. CP(IB)-935/(MB)/2020 and the Corporate Insolvency Resolution Process against the Corporate Debtor has commenced from today, this Application IA 1930/2020 has become **“Infructuous”**.

Accordingly, **IA 1930/2020** is disposed of as **“Infructuous”**.

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

Sd/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**



A handwritten signature in blue ink, appearing to be 'S. Singh', written over the stamp.