

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, NEW DELHI

C.P. NO.IB-528(PB)/2019

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited
....Petitioner

Vs.

Taurus Agile Technology (P) Ltd.Respondent

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

**Order delivered on :01.05.2019
16.04.2019**

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SH. S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For Petitioner : Mr. Sugam Seth, Mr. Abu John Matthew,
Ms Deboshree Shah, Advs.
For Respondent :Mr. H. S. Sharma, Director of the Corporate
debtor in person

ORDER
M.M.KUMAR, PRESIDENT

The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to



Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Taurus Agile Technology (P) Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditor' is a company incorporated under the provisions of the Companies Act, 1956 and registered with the Reserve Bank of India (RBI) as an Asset Reconstruction Company registered under section-3 of the SARFESI Act, 2002.

2. The Corporate Debtor – Taurus Agile Technology (P) Ltd. was incorporated on 16.08.2005 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U29299DL2005PTC139681.
3. It is submitted by the Petitioner that IDBI ('Assignor Bank') had initially sanctioned a foreign currency loan (for brevity 'FCL') of US\$ 7.676 million (equivalent to Rs.3400 Lakhs) and a Working Capital Facility amounting to Rs. 1600 Lakhs **(Annexure – 6)** subject to the terms and mentioned in the Sanction Letter dated 28.03.2007 **(Annexure -5)**. Further the Assignor bank along with State Bank of Patiala and State



Bank of Travancore also executed a Working Capital Consortium Agreement dated 24.08.2007 (**Annexure - 7**) with the respondent- corporate debtor. The above mentioned facilities availed by the respondent-corporate debtor were secured by executing various documents as mentioned in detail in Part- V of the petition. Subsequently, IDBI vide an Assignment Agreement dated 22.03.2016 (**Annexure 10**) had assigned the debt to Edelweiss Asset Reconstruction Company Ltd.

4. It is also submitted by the petitioner – financial creditor that the account of the corporate debtor was classified as NPA by the IDBI on 31.03.2010. Further the bank issued a Loan Recall Notice dated 31.07.2013 calling upon the respondent-corporate debtor to repay a sum of Rs. 6703.35 lakhs. The Bank had also initiated action under SARFESI Act and took the physical possession of the property on 25.05.2017 and till date the possession of the mortgaged property along with the plant and machinery lies with the petitioner – financial creditor.



5. The precise case of the Petitioners is that the total amount in default due to the financial creditor by the corporate debtor as on 31.01.2019 is Rs. 131,60,90,423.02/- . A tabular chart depicting working of the amount in default is annexed **(Annexure – 11)**.
6. The Financial Creditor has proposed the name of Mr. Subhash Kumar Kundra as the Insolvency Professional with the address C-4E/135, Janakpuri East, New Delhi - 110058 and E-mail-id – kundra.sk27@gmail.com. His registration number is IBBI/IPA-002/IP-N00399/2017-18/11174. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration **(Annexure -4)**.
7. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the Application the Financial Creditor has mentioned the amount claimed in default and the date of the default.



8. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate that Loan disbursed which includes the deed of hypothecation, the Personal Guarantees, promissory note and the decree of the Debts Recovery Tribunal dated 07.12.2016 (**Annexure-13**).

9. On 15.03.2019, ten days time was granted to the respondent to file reply but reply has not been filed and the same is sought to be filed in the Court today after the expiry of period one month. In para 3 of the reply filed by the Authorised Director a categorical statement has been made that the corporate debtor has no objection if the present petition is admitted and the Corporate Insolvency Resolution Process is initiated.

10. In view of the aforesaid statement made on behalf of the Respondent-Corporate Debtor, we find that advancement of loan and default stand admitted. Even Otherwise there is overwhelming documentary evidence on record which support those findings. A perusal of the above warrants the admission of the petition.

11. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled.
12. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in the case of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB- 1039(PB)/2018).
13. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.
14. As a sequel to the above discussion, this petition is admitted and Mr. Subhash Kumar Kundra is appointed as the Interim Resolution Professional.



15. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

16. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.

17. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Subhash Kumar Kundra to meet out the expenses to perform the functions assigned to him in accordance with Regulation



6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

18. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sdl-
(M.M.KUMAR)
PRESIDENT

Sdl-
(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

01.05.2019
(VIDYA) 16.04.2019