(2019) 11 NCLT CK 0010

In the National Company Law Appellate Tribunal

Case No : ITEM No. 126(IB)-1083(PB) Of 2018

Edelweiss Asset Reconstruction Company Ltd. APPELLANT

Vs

Adel Landmarks Ltd. RESPONDENT

Date of Decision : 01-11-2019

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 — Regulation 6, 32
Insolvency And Bankruptcy Code, 2016 — Section 7, 13(2), 14

Citation : (2019) 11 NCLT CK 0010

Hon'ble Judges : M.M. Kumar, CJ;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Sanjay Bhatt, Akshit Kapur, Kiran Sharma, Udayraj Patwardhan, RP, Sugam Seth, Vikram Babbar, Alok Kr. Aggarwal, Pavni Poddar, Anushruti, Anushka Sharma, Aakarshan Aditya, Vibhu Tiwari, Sharad Tyagi, Archana Tyagi, Yukti Takan, Kirat Singh Nagra, Aayushi Singh, Rashmeet Kaur

Judgement

CA-2182(PB)/2019

1. Hon'ble Appellate Tribunal has set aside the order dated 07.03.2019 passed by the Adjudicating Authority/NCLT, Special Bench whereby the petition was dismissed. In para 42 of the order dated 20.09.2019 the Hon'ble Appellate Tribunal had issued the following directions for admission of some of the petition and the same reads as under:-

"42. The Adjudicating Authority will admit the applications under Section 7 filed by 'Edelweiss Asset Reconstruction Company Limited' against 'Sachet Infrastructure Pvt. Ltd.', 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.' and appoint the 'Resolution Professional' of 'Adel Landmarks Limited'- (Developer) ('Principal Borrower') as common 'Resolution Professional' to ensure that the 'Corporate Insolvency Resolution Process' against 'Adel Landmarks Limited'- ('Corporate Debtor') proceed jointly and 'Information Memorandum' is prepared in a manner that the 'Residential Plotted Colony' at village Palwal at Sectors 8 & 9 in terms of the License No. 46 of 2009 and License No. 53 of 2009, is completed in one go by initiating a consolidated 'Resolution Plan(s)' for total development."

2. A perusal of the aforesaid para shows that the petitions filed by Edelweiss Asset Reconstruction Company Ltd. in respect of various companies namely Sachet Infrastructure Pvt. Ltd. (C.P. No. (IB)-190(PB)/2019), Magad Realtors Pvt. Ltd. (C.P. No. (IB)-169(PB)/2019), Mehak Realtech Pvt. Ltd. (C.P. No. (IB)-168(PB)/2019), Sameeksha Estates Pvt. Ltd. (C.P. No. (IB)-191(PB)/2019), Jamvant Estates Pvt. Ltd. (C.P. No. (IB)-170(PB)/2019) are to be admitted. Complying with the direction issued, we admit the aforesaid five cases.

3. Hon'ble Appellate Tribunal has also clarified that in all these matters the Resolution Professional who was functioning in the case Adel Landmarks Ltd. Mr. Udayraj Patwardhan, Insolvency Professional having registration No. IBBI/IPA-001/IP-N00024/2016-17/10057 address:- C-703, Marathon Innova, Off Ganapatrao Kadam Marg, Lower Parel (West), Mumbai-400013 and email-id-udayraj_patwardhan@sumedhamanagement.com is to be appointed to act as an Interim Resolution Professional.

4. 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 aforesaid five company petitions filed under Section 7 of the Insolvency & Bankruptcy Code.

5. 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.

6. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Udayraj Patwardhan, Insolvency Professional 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.

7. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week of the admission to the IRP, otherwise coercive steps to follow.

8. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

9. 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.

10. However, in respect of other cases mentioned in para 43 the matter has been remitted back and those cases along with their respective files will posted for hearing on 15.11.2019.

