

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

M.A. No. 1392/2019

IN

C.P. No. 382/IB/MB/MAH/2018

Under section 60(5) of the IBC, 2016 and
Regulation 37 of the IBBI (Liquidation
process) Regulations, 2016

In the matter of

Edelweiss Asset Reconstruction Co. Ltd.

....Petitioner

v/s.

Reid and Taylor India Limited

....Corporate Debtor

M.A. No. 1392 OF 2019

Finquest Financial Solutions Pvt. Ltd.

... Applicant

v/s

Mr. Ravi Shankar Devarakonda

... Respondent

Order delivered on: 10.05.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Applicant: Sr. Counsel Mr. Janak Dwarkadas, Mr. Nishit Dhruva, Mr. Prakash
Shinde, Mr. Rohan Agrawal, Ms. Swati, Advocates i/b MDP
Partners.

For the Petitioner: Sr. Counsel Mr. Mustafa Doctor, Mr. Ranjit Shetty, Mr. Rahul Dev,
Advocates i/b Argus Partners.

For the Liquidator: Ms. Pratiksha Agrawal, Advocate i/b Vaish Associates.

Mr. Ravi Shnakar Devarakonda, Liquidator of RTIL Ltd.

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Miscellaneous Application No. 1392 of 2019 is filed by Finquest Financial Solutions Pvt. (hereinafter called "Applicant") under section 60(5) read with section 52 of the Insolvency and Bankruptcy Code, 2016 and Regulation 37 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016

against Mr. Ravi Shankar Devarakonda, Liquidator of Reid and Taylor India Limited(hereinafter called "Respondent") seeking the following reliefs:

- a. That this Hon'ble Tribunal be pleased to permit the Applicant to sell/dispose of the Secured Assets of the Corporate Debtor (RTIL Ltd.) as more particularly described in Annexures 1 and 2 hereto to realize its security interest in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 read with Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016;
- b. That this Hon'ble Tribunal be pleased to direct the Respondent to forthwith furnish to the Applicant a copy of the Valuation Report/s in his possession in respect of the Secured Assets of the Corporate Debtor;
- c. Pending the completion of the sale of the Secured Assets of the Corporate Debtor (RTIL Ltd.) as more particularly described in Annexure 1 and 2 hereto, the Secured Assets of the Mysore Unit of the Corporate Debtor should be directed to be under the possession, overall control, supervision and direction of the Applicant herein;
- d. For costs; and
- e. For such further and other reliefs as this Tribunal may deem fit and proper in the nature and circumstances of the present case.

2. The MA has been filed by one of the Financial Creditors of the Corporate Debtor, Finquest Financial Solutions Pvt. Ltd. claiming sole first charge over all the fixed assets and first pari-passu charge over the current assets of the Corporate Debtor. By way of this Application, the Applicant seeks permission to realize their security interest by selling or disposing the secured assets of the Corporate Debtor on "as is where is" basis as a going concern as per Section 52 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016. The Applicant has submitted an envelope to this Tribunal as well as to the Liquidator informing the price at which they intend to realize the assets of the Corporate Debtor. They also seek that pending the completion of sale of the secured assets of the Corporate Debtor, the secured assets should be under the possession, overall control, supervision and direction of the Applicant. In support of the said Application, the Applicant relied upon the following Annexures:

Annexure 1:

List of fixed assets of the Corporate Debtor

All that piece and parcel of land admeasuring in the aggregate 35 Acres and 16 Guntas comprised in Serial No. 63, 64, 65, 66/1, 66/2, 66/3, 67, 68, 69/1, 69/2, 71/1, 71/2, 51, 72/p in Thandavapura Village, Hobli Chikkainachaira, Taluka Nanjangud, District Mysore in the State Karnataka and surrounded on the South, West and North by Sy. Nos. 61, 62m, 72, 70, 127, and 128 and on the East by

road to be constructed erected thereof and all machinery attached to the earth or anything hastened to the earth, both present and future.

Annexure 2:

List of First pari-passu charge on the current assets

The Corporate Debtor's entire stocks of raw materials, semi-finished and finished goods, consumable stores and spares including book-debts, bills whether documentary or clean, outstanding monies, receivables, both present and future.

Annexure 3:

Memorandum of Entry dated 12.06.2009

The name of the Company "Reid and Taylor India Limited" has created first charge in favor of India Debt Management Private Limited (IDM) and second charge basis to Bank of India, State Bank of Indore, IDBI Bank, Jammu and Kashmir Bank Limited, Indian Bank, Exim Bank and State Bank of India.

Annexure 4:

Assignment deed dated 31.08.2016

The Assignment deed was executed between IDM (Assignor) and Finquest Financial Solutions Private Limited (Assignee). The Assignor has assigned SKNL Sale debentures and benefits of all its rights, titles and interests thereto. This includes first charge on the immovable property of the Corporate Debtor at Mysore.

Annexure 5:

Index of charges of the Corporate Debtor as per the records of MCA Website

At serial no. 16 the name of the Applicant i.e. Finquest Financial Solutions Pvt. Ltd. is shown as a charge holder and the same has been created on 17.09.2009 and modified on 10.10.2016 for the loan granted for the amount of Rs. 275 crores.

At serial No. 24, the name of the Applicant i.e. Finquest Financial Solutions Pvt. Ltd. is shown as a charge holder and the same has been created on 31.07.2008 and modified on 31.08.2016 for the loan granted for the amount of Rs. 327 crores.

Annexure 6:

Assignment agreement dated 10.10.2016

The Assignment agreement was executed between ICICI Bank Limited and Finquest Financial Solutions Private Limited (Assignee). The Assignor has

assigned rupee term loan of Rs. 275 crores in favor of the Applicant including any security interest created by the borrower.

Annexure 7:

First pari-passu charge over the schedule A properties and second charge over the Schedule B properties

At serial no. 16 the name of the Applicant i.e. Finquest Financial Solutions Pvt. Ltd. is shown as a charge holder and the same has been created on 17.09.2009 and modified on 10.10.2016 for the loan granted for the amount of Rs. 275 crores.

At serial No. 24, the name of the Applicant i.e. Finquest Financial Solutions Pvt. Ltd. is shown as a charge holder and the same has been created on 31.07.2008 and modified on 31.08.2016 for the loan granted for the amount of Rs. 327 crores.

Annexure 8:

Letter/ communication dated 18.10.2013

Letter from IDM to IDBI Trustee Services Limited (as a trustee for UCO Bank), UCO Bank, ICICI Bank Limited, Laxmi Vilas Bank Limited, L & T Finance Limited and IDBI Bank stating that the mortgage created in favor of the IDM is a first ranking mortgage and all other charges are mortgages created by RTIL without prior consent or no objection certificate of IDM shall be subordinate and subservient to the prior mortgage created in favor of IDM.

Annexure 9:

Statement of claims admitted and details of the security held by the Financial Creditors of the Corporate Debtor by the liquidator

As per serial No. 4 the claim admitted by the liquidator is Rs. 816,19,76,033/- towards the IDM portion of the debt assigned to the Applicant and an amount of Rs. 325,04,17,658/- admitted towards the ICICI portion of the debt assigned to the Applicant. The entire amount has been classified as secured debt mentioning that the Applicant holds first pari-passu charge on immovable fixed assets at Mysore, first pari-passu charge on movable fixed assets and second pari-passu charge on current assets of the Corporate Debtor.

Annexure 10:

Statement of claim filed with the liquidator

The Applicant has, through Form D (proof of claim by Financial Creditor) claimed an amount of Rs.364,57,25,419/- (towards assignment of debt from ICICI Bank Ltd.) and an amount of Rs. 816,19,76,033/- (towards assignment of debt from

IDM). The Applicant has referred to the respective Assignment agreements in respect of the details of security held.

Annexure 11:

E-mail dated 01.04.2019 sent by the Applicant to the Liquidator

The Applicant by way of this e-mail had requested the Liquidator to share the Liquidation value report of the assets of the Corporate Debtor.

Reply of Edelweiss

3. Edelweiss Asset Reconstruction Company Ltd. (Edelweiss) is one of the Financial Creditors of the Corporate Debtor who has objected to the Application filed by Finquest Financial Solutions Pvt. Ltd. In their objection they have stated that Section 52 of the IBC does not empower a secured creditor to stand outside the liquidation process to enforce its security to the exclusion of other secured creditors having same ranking pari-passu charge over the same security interest, more particularly when the issue of priority of charges has not been adjudicated by the Hon'ble Court of Civil judge Sr. Division at Nanjangud, Karnataka under Suit No.84 of 2013 (Suit).

4. Edelweiss has further stated that this Hon'ble tribunal does not have the jurisdiction to determine disputed questions of facts regarding the validity/existence of the registered same ranking pari-passu charges of secured creditors over the same asset. They have submitted that since the Applicant is not the sole secured creditor, it is not open for the Applicant to realize its security interest to the exclusion of other secured creditors having first charge over the same asset under the misconceived notion of allegedly being a prior exclusive first charge holder of the asset.

5. In support of the said Objection, Edelweiss has relied upon the following Annexures:

Exhibit A – Minutes of the second meeting of the Committee of Creditors of RTIL Ltd.

The Minutes of the CoC meeting shows that the voting share of the Applicant is merely 20.02% whereas that of Edelweiss is 23.40% of the total claim basis the claim amount admitted by the Resolution Professional.

Exhibit B – Copy of Suit No.84 of 2013 filed with the Court of Civil judge Sr. Division at Nanjangud, Karnataka

The Suit has been filed by IDM as a first charge mortgage for enforcement of their security interest.

Exhibit C – Written Statement dated 19.09.2013 filed in Suit No.84 of 2013 by Defendant No. 16 i.e. UCO Bank.

UCO Bank, has by way of the written statement challenged the Suit on various grounds including that the first charge over all the present and future movable and immovable fixed assets has been created in favor of UCO Bank.

Exhibit D – Screenshot of the case status of Suit No.84 of 2013

The screenshot of the case status depicts that the Suit is pending disposal and the next date of hearing is 19.06.2019.

Exhibit E – Recovery Certificate No.10856 dated 19.12.2016

The Recovery Certificate has been issued by the Debt Recovery Tribunal, Bangalore, Karnataka under O.A. No.711/2015. By way of this Recovery Certificate it has been ordered that Edelweiss, along with other banks, are entitled to recovered a sum of Rs.2495,49,98,442.20/- In case of failure to pay this amount within 30 days, they are entitled to recover the same from the sale of the scheduled properties which includes the immovable property of the Corporate Debtor at Mysore.

Exhibit F – Copy of Form 8 filed by EXIM Bank on 20.09.2006 with the Registrar of Companies

By way of this Form, SKNL (holding company of the Corporate Debtor) had created a second pari-passu charge on immovable properties of SKNL in favor of EXIM Bank. These properties include the immovable property at Mysore as it was prior to the demerger of the Corporate Debtor from SKNL in 2008.

Exhibit G – Memorandum of Entry dated 16.06.2012

This Memorandum of Entry mentions the charge created in favor Laxmi Vilas Bank and EXIM Bank (both assigned to Edelweiss). However it does not state whether it is the first or second charge over the immovable property at Mysore.

Exhibit H – Assignment agreement dated 28.03.2014 executed between EXIM Bank and Edelweiss

Basis the agreement, EXIM Bank has assigned its loans along with its rights, title and interest to Edelweiss. EXIM Bank has referred to Memorandum of Entry dated 30.09.2009 which clearly ascertains that EXIM Bank has second paripassu charge over the immovable and movable fixed assets of the Corporate Debtor.

Reply of Liquidator

6. The Liquidator has submitted a reply stating that he has verified the documents submitted by the Financial Creditors including the Applicant and also verified documents available with the Registrar of Companies with respect to the

security held by the charge holders. Basing on this, the Liquidator submits that the Applicant is the sole first charge holder of the immovable property of the Corporate Debtor at Mysore and the movable fixed assets of the Corporate Debtor. The Applicant holds only a second pari-passu charge over the current assets of the Corporate Debtor. In support of the same, the Liquidator has provided the following information in the form of a table. The same has been reproduced below:

Name of charge holder	Date to which charge over movable property relates	Date to which charge over immovable property relates
Applicant - Loan of INR 150.78 crores acquired from IDMPPL	October 26, 2007 for the charge on fixed assets of SKNL (predecessor in title) and February 2, 2009 for the charge over the movable assets of RTIL	February 14, 2008 for the charge on fixed assets of SKNL (predecessor in title) and June 12, 2009 for the charge over the immovable assets of RTIL.
Applicant - Loan of INR 275 crores acquired from ICICI Bank	September 16, 2009	September 17, 2009
Edelweiss ARC Ltd loan INR 140 crores purchased from ICICI Bank	December 9, 2011	December 10, 2011
Edelweiss ARC Ltd loan INR 75 crores purchased from Lakshmi Vilas Bank	December 1, 2011	June 16, 2012
JM ARC Ltd loan INR 100 crores purchased from UCO Bank	December 24, 2011	June 16, 2012
L&T Finance Ltd INR 50 crores	October 13, 2011	June 16, 2012

7. From the above pleadings this Bench forms the following issues:
1. Whether the Applicant is entitled to realize their security interest in the manner specified under Section 52(1)(b) r/w Regulation 37 of the IBBI (Liquidation process) Regulations, 2016.
 2. Whether this Tribunal has jurisdiction to determine on the issue of disputed question of fact as to who the first charge holder is.

8. As regards the Issue No. 1, only the first charge holder/the secured creditor with first pari-passu charge can stay outside the liquidation process by the Liquidator and realize his security interest in the manner provided under the above provisions of law. The documents on record as filed by the Applicant particularly annexure 2 to annexure 11, in fact, supports the claim of the Applicant that he is the first charge holder to all the immovable/fixed assets of the company as contained in annexure 1 of the application. Even the MCA portal which depicts the Register of charges clearly shows that the charges have been created in favor of the original lender way back on 17.09.2009 and subsequently modified on 10.10.2016 in favor of the Assignee, i.e. the Applicant. Of course the other lenders/assignees i.e. Edelweiss Asset Reconstruction Company, which is also claiming the first charge over the fixed assets of the Corporate Debtor, has got the charge subject to the NOC being granted by the IDM who is the prior charge holder but the said NOC was never obtained by the Edelweiss. The entire pleadings and the supportive documents filed by the Edelweiss does not substantiate their claim that they are the first charge holders. Apart from that on a plain reading of the table furnished by the Liquidator with regard to the charges clearly and beyond any doubt show that the first charge holder is none other than the Applicant. In addition to the above we have also applied our mind to the averments made in suit no. OS84/2013 on the file of the Civil Judge (Senior Division) Nanjangud at para 5 it is clearly mentioned as follows:

“the Plaintiff no. 2 entered into a legally binding Debenture Subscription Agreement dated 25.05.2007 with Defendant No. 2 as amended by addendums dated 13.08.2008 and 05.11.2008 (hereinafter collectively referred to as Debenture Subscription Agreement wherein the plaintiff no. 2 have subscribed to 304,50,000 secured non-convertible debenture having a face value of INR 100/- each (hereinafter referred to as NCD’s) issued by Defendant no. 2)”.

9. The said document has been marked as annexure A of the said suit. It is pertinent to note that the Suit has not been filed by the Applicant but by the predecessor to the charge holder i.e. IDBI Trusteeship Services Ltd. acting in its capacity as a debenture trustee to IDM. Therefore, subsequent to the execution of the assignment deeds in favor of the Applicant, the Applicant was impleaded into the Suit to protect his own interest as he is a proper and necessary party.

10. The point to be noted is that the entire rights of the Applicant with regard to the first charge over the fixed assets of the company originally flow from the above said document and the subsequent documents have been thoroughly verified and vetted by the Liquidator. The next point also to be noted is that whether any NOC has been obtained by the subsequent lenders/charge holders from the IDM or not.

Even though, the Edelweiss is very much aware of the fact that the rights (if at all any) as first charge holders are under a challenge, it's a minimum duty expected of an aggrieved person/party to seek appropriate remedy. The Edelweiss excepting filing a reply in the above application raising a contentious issue claiming a first charge, did not bothered to ventilate their grievance, if any or enforce their rights, if any, before any Forum. On the other hand, even though every document/pleading is in favor of the Applicant as the first charge holder, with all the knowledge the Edelweiss has about the first charge holder i.e. the Applicant, is not entitled to question the same at this belated time having slept over the matter for several years. Even assuming for a moment but not asserting, whether Edelweiss has any case in their favor to substantiate that they are the first charge holders, the simple answer as per the documents, which speaks for itself is that the Edelweiss does not have the first charge and all the lenders including Edelweiss only stand at the second place as the next pari-passu charge holders after the Applicant. In addition to the above, the most important aspect of the realization of security interest by the secured creditor who is having the first charge is to be verified and vetted by the Liquidator who in this particular case had verified the same in terms of Section 52(3) of the Insolvency and Bankruptcy Code, 2016 and in all categorical terms ascertained that the applicant is the first charge holder of the fixed assets of the Corporate Debtor. In view of the above un-contradictable documentation in favor of the Applicant, the supportive documents and the reply filed by the Liquidator after duly scrutinizing the documents, we hold that the Applicant is entitled to realize their security interest under Section 52(1)(b) read with Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016. Hence the issue no. 1 is decided in favor of the Applicant. As regards the current assets, we hold that the Applicant does not have the first charge..

11. As regards the issue no. 2, in this particular case documents speak for themselves. There is not a single document which raises even an iota of doubt as to the question who the first charge holder is. When the entire documents are in favor of then Applicant, excepting a frivolous/untenable claim by the Edelweiss on the issue of first charge does not create a bar on this Tribunal to decide the issue as to who is the first charge holder on the basis of un-contradictable/ undisputable documentation. First of all there is no tenable dispute as regards the facts in question for the reason all the documents are un-contradictable and the genuine of the same is not in question. Even otherwise, we hold that it is the exclusive prerogative of this Tribunal which is exclusively vested with the power to adjudicate the matters relating to and connected with insolvency and bankruptcy law particularly the process of liquidation and the related measures to be adopted in the said process of liquidation. This is just not a substantive law but also a procedural law. Therefore, we hold that this Tribunal can decide on the issues of disputed

question of fact when the documents unequivocally prove the point that is sought to be decided. The so called dispute raised by the Edelweiss is just frivolous and is hereby rejected.

12. From the above, we hold that the issue no. 1 and 2 are decided in favor of the Applicant and further we hold that the Applicant is entitled to realize their security interest as provided under Section 52(1)(b) r/w Regulation 37 of the IBBI (Liquidation Process) Regulations, 2016.

13. The Liquidator is hereby directed to hand over the symbolic possession of the fixed assets of the Corporate Debtor to the Applicant to enable the Applicant to proceed with the sale of the Assets in terms of Section 52(1)(b) read with Regulation 37 of the IBBI (Liquidation Process) Regulation, 2016. Further, the Liquidator is directed to inform this Bench the manner and the progress in which the Applicant is proceeding with the sale of the Assets from time to time for further directions/ instructions from this Bench.

14. Hence this Order.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Bhaskara Pantula Mohan
Member (J)