NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 210 of 2018

IN THE MATTER OF:

Dr. H. N. Nagaraj **...Appellant**

Versus

Edelweiss Asset Reconstruction Company Ltd. & Anr. **...Respondents**

Present:
For Appellant : **Ms. Pritha Srikumar Iyer, Advocate**

For 1st Respondent: **Mr. Avishkar Singhvi, Mr. Rahul Jain, Mr. Bharat Sangal and Ms. Babita Kushwaha, Advocates**

O R D E R

14.05.2018 The appellant, shareholder of M/s. Live 100 Hospital Private Limited (2nd respondent) has preferred this appeal against order dated 2nd April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) Bengaluru Bench whereby and whereunder the application preferred by M/s. Edelweiss Asset Reconstruction Company Limited (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') has been admitted, order of moratorium has been passed and Resolution Professional has been admitted with certain directions.

2. Learned counsel appearing on behalf of the appellant submitted that though there is 'debt' but there was no 'default'. This aspect has not been properly considered by the Adjudicating Authority. She referred to

a 'Restructured Agreement' dated 20th October, 2014 between the 'Financial Creditor' and the 'Corporate Debtor' whereunder the 'Restructured Liability' was laid down. She referred to Paragraph 5 of the 'Restructured Agreement' to suggest that the property of the hospital including car parking located at place were sold by December, 2014 and after selling number of properties payments were to be made. However, the respondent obtained injunction order from a Court.

3. Mr. Avishkar Singhvi, learned counsel appearing on behalf of the respondent submitted that even in terms of the restructuring, the amount has not been paid and the 'Corporate Debtor' defaulted to pay the instalment.

4. We have noticed the rival contentions and perused the record. 'Repayment of restructured liability' have been shown at paragraphs 4 and 5 of the 'Agreement' dated 20th October, 2014, which reads as follows:

> *"4. **Repayment of Restructured Liability as follows:***
>
> *a. The Company undertake to repay the principal amount of the Restructured Liability in approx. 7 years with 16 unequal quarterly instalments. Detailed repayment working is given in Schedule I.*
>
> *b. Interest will be charged @12.50% p.a. compounded on quarterly rests. However interest for the period July 2014 to March 205 will be on simple basis provided the same is*

paid by December 2014. From April 2015, quarterly interest will be serviced regularly. The detailed interest payment is indicted in Schedule I.

c. Principal amount will be repaid after adjusting interest, penalty and other charges if any, either from Sale of Secured Assets, Personal Property or internal cash accruals. Detailed Restructured Amortization Schedule is given in Schedule I.

5. Property of the hospital (Car Parking) located at Singasandra, Village Begur Hobli, Hosur Road, Bangalore will be sold by December, 2014. The property is likely to fetch Rs. 15 Cr, out of which Rs.12 cr. Will be paid to EARC towards interest payment for the period July 1, 2014 to March 31, 2015 and residual towards principal repayment. The balance Rs. 3 Cr. Will be utilised by the Hospital for hospital's improvement, acquiring Plant & Machinery and towards Capital Gain Tax."

5. The dates of payment of instalments and the amount of demand as shown in the Schedule is as follows:

Schedule:I

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
01-Jul-14	55,00,00,000	-	-	55,00,00,000	-	55,00,00,000
30-Sep-14	55,00,00,000	1,71,40,411	-	55,00,00,000	-	55,00,00,000
31-Dec-14	55,00,00,000	1,73,28,767	4,92,40,598	55,00,00,000	7,07,49,496	47,92,50,504
31-Mar-15	47,92,50,504	1,47,71,420	-	47,92,50,504	-	47,92,50,504
30-Jun-15	47,92,50,504	-	1,49,35,547	47,92,50,504	4,00,00,000	43,92,50,504
30-Sep-15	43,92,50,504	-	1,38,39,399	43,92,50,504	-	43,92,50,504
31-Dec-15	43,92,50,504	-	1,38,39,399	43,92,50,504	-	43,92,50,504
31-Mar-16	43,92,50,504	-	1,36,88,971	43,92,50,504	-	43,92,50,504
30-Jun-16	43,92,50,504	-	1,36,88,971	43,92,50,504	-	43,92,50,504
30-Sep-16	43,92,50,504	-	1,38,39,399	43,92,50,504	3,00,00,000	40,92,50,504
31-Dec-16	40,92,50,504	-	1,28,94,194	40,92,50,504	-	40,92,50,504
31-Mar-17	40,92,50,504	-	1,26,13,885	40,92,50,504	3,00,00,000	37,92,50,504
30-Jun-17	37,92,50,504	-	1,18,19,108	37,92,50,504	-	37,92,50,504
30-Sep-17	37,92,50,504	-	1,19,48,988	37,92,50,504	4,50,00,000	33,42,50,504
31-Dec-17	33,42,50,504	-	1,05,31,180	33,42,50,504	-	33,42,50,504
31-Mar-18	33,42,50,504	-	1,03,02,242	33,42,50,504	4,50,00,000	28,92,50,504
30-Jun-18	28,92,50,504	-	90,14,314	28,92,50,504	-	28,92,50,504
30-Sep-18	28,92,50,504	-	91,13,372	28,92,50,504	4,50,00,000	24,42,50,504
31-Dec-18	24,42,50,504	-	76,95,564	24,42,50,504	-	24,42,50,504
31-Mar-19	24,42,50,504	-	75,28,269	24,42,50,504	4,50,00,000	19,92,50,504
30-Jun-19	19,92,50,504	-	62,09,519	19,92,50,504	2,50,00,000	17,42,50,504
30-Sep-19	17,42,50,504	-	54,90,084	17,42,50,504	2,50,00,000	14,92,50,504
31-Dec-19	14,92,50,504	-	47,02,413	14,92,50,504	2,50,00,000	12,42,50,504
31-Mar-20	12,42,50,504	-	38,72,190	12,42,50,504	2,50,00,000	9,92,50,504
30-Jun-20	9,92,50,504	-	30,93,081	9,92,50,504	2,50,00,000	7,42,50,504
30-Sep-20	7,42,50,504	-	23,39,399	7,42,50,504	2,50,00,000	4,92,50,504
31-Dec-20	4,92,50,504	-	15,51,728	4,92,50,504	2,50,00,000	2,42,50,504
31-Mar-21	2,42,50,504	-	7,47,447	2,42,50,504	2,42,50,504	-
Total			26,45,39,264		55,00,00,000	

6. Admittedly, the 'Corporate Debtor' failed to pay instalments in terms of the schedule I annexed to the 'agreement'. What is the reason for default of payment cannot be a ground to reject the application under Section 7, as the Adjudicating Authority is only supposed to see whether the application is complete or not and whether there is any 'debt' or 'default'. We find no merit in this appeal. It is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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