

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.291/Chd/CHD/2018

**Under Section 7 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:

Edelweiss Asset Reconstruction Company Limited,

Having Registered Office at Edelweiss House, Off C.S.T. Road, Kalina, Mumbai-400098 (acting in its capacity as trustee of EARC Trust SC 168) through its Authorized Signatory Naman Awasthi

...Petitioner-Financial Creditor

Versus

M/s Winsome Yarns Ltd.

Registered Office at SCO No.191-192, Sector 34-A, Chandigarh- 160022

Through its Principal Officer/Managing Director/Director

...Respondent-Corporate Debtor

Judgment delivered on 17.03.2020

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : 1. Mr. Aalok Jagga, Advocate
 2. Ms. A.P.S. Madan, Advocate

For the Respondent : 1. Mr. Anand Chhibbar, Senior Advocate
 2. Ms. Eshna Kumar, Advocate
 3. Mr. K.V. Singhal, Advocate
 4. Mr. Vaibhav Sahni, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

The instant petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as '**Code**') read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

(hereinafter referred to as '**Rules**'). The application has been filed in Form 1 as prescribed in Rule 4(1) of the Rules.

2. The application in the prescribed Form 1 is filed by Edelweiss Asset Reconstruction Company Limited (hereinafter referred to as '**petitioner**' and/or '**financial creditor**') for initiation of Corporate Insolvency Resolution Process ('**CIRP**') in the case of M/s Winsome Yarns Limited. The petition is supported by the affidavit of Mr. Naman Awasthi, Law Associate and Authorized Signatory of petitioner-financial creditor. Annexure P2 is the resolution dated 07.03.2018 passed by the operations committee of Edelweiss Asset Reconstruction Company Limited, appointing 62 officials of the petitioner-financial creditor, to sign and execute for and on behalf of the company. The name of Mr. Naman Awasthi appears at Serial No.47 of the list of officials, in whose favour board resolution has been passed.

3. M/s Winsome Yarns Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 1956 with authorized share capital of ₹85,00,00,000/- and paid up capital of ₹70,70,72,7290/-. The CIN of the respondent-corporate debtor is L17115CH1990PLC010566 and its registered office is situated in Union Territory of Chandigarh and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

4. The facts of the case, briefly stated, are that an Assignment Agreement dated 10.12.2015 (Annexure P-1) was entered into between Punjab National Bank as Assignor and Edelweiss Asset Reconstruction Company Limited, as Assignee, in respect of debt and securities of M/s Winsome Yarns Limited i.e. the

corporate debtor herein and through the said agreement, the petitioner herein acquired the rights of Punjab National Bank over the respondent-corporate debtor. As per Part IV of Form 1, Cash Credit Facility amounting to ₹48,75,00,000/-, Term Loan Facility amounting to ₹75,00,00,000/-, Term Loan Facility of ₹4,06,00,000/- and Term Loan Facility of ₹2,99,00,000/- was sanctioned to the respondent-corporate debtor. It is also submitted that respondent-corporate debtor has also defaulted in ILC. The Due Date of Default for all the loans is 17.01.2014. It is stated in Part IV that respondent-corporate debtor has admitted its liability in clear and unequivocal terms in its Annual Report for the financial year ended as on 2016-17 (Annexure P-5). It is further stated that outstanding amount as on 30.04.2018 which is recoverable from the respondent-corporate debtor is ₹2,37,49,54,804.29/-, computation whereof is as under:-

Facilities	Sanctioned Limit (₹)	Amount outstanding as on 30.04.2018	Interest rate pendente lite and future p.a. with monthly rests
Cash Credit (4451008700000620)	48,75,00,000/-	1,00,25,22,017.43	10.20% +3%+2% (penal) = 15.20%
Term Loan (445100IC00000242)	75,00,00,000/-	1,06,19,81,681.20	10.20% + 2% (penal) = 12.20%
Term Loan (445100IC00000710)	4,06,00,000/-	5,51,86,423.77	10.20% + 2% (penal) = 12.20%
Term Loan (445100IC00000729)	2,99,00,000/-	2,27,61,242.38	10.20% + 2% (penal) = 12.20%
ILC (Due Date Default 445100UR00000087)	--	14,70,11,711.53	10.20% +3%+2% (penal) = 15.20%
ILC (Due Date Default 420700UR00000288)	--	8,54,91,727.97	10.20% +3%+2% (penal) = 15.20%
Total		2,37,49,54,804.29	

5. In Part V of Form 1, the petitioner has mentioned various immovable properties of the respondent-corporate debtor, held by it as securities. Further, it

is stated that for Term Loan- first pari passu charge on fixed block assets of the company, for Working Capital- first pari passu charge on the entire current assets of the company with other consortium members, are held by the petitioner. It is also stated that as per CDR Stipulations Company has to pledge 51% of the issued capital of the company or 100% of the promoters holding, whichever is lower.

6. It is further stated in Part IV that the respondent-corporate debtor also executed various documents like Sanction Letter dated 15.04.2006, Extract of Board Resolution passed by the Board of Directors of the Company dated 26.04.2006, Agreement of Hypothecation of assets to secure Term Loan for ₹7500.00 Lakhs dated 22.06.2006, Hypothecation of movable assets fixed/block assets dated 22.06.2006, Deed of Hypothecation to secure LC on DA basis dated 22.06.2006, Letter of Undertaking dated 22.06.2006 etc. in favour of the respondent-corporate debtor. The same are found to be attached with the petition.

7. It is stated that demand notices, all dated 23.08.2014 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as '**SARFAESI**') were issued by Punjab National Bank to respondent-corporate debtor and its guarantors/associate companies. As per the said notices, an amount of ₹1,32,06,51,745/- as on 17.04.2014 with future interest was payable the respondent-corporate debtor. Copy of demand notices are appended as Annexures P 72 to P 77.

8. Thereafter, Representation/Reply and Objections dated 24.10.2014 under Section 13(A) of the SARFAESI Act was submitted by the respondent-

corporate debtor to the Punjab National Bank, raising various objections. Copy of representation/reply/objection is appended as Annexure P 78.

9. Subsequently, possession notices dated 27.11.2014, under Section 13(4) of the SARFAESI Act, was issued by Punjab National Bank to the respondent-corporate debtor and its associate company/guarantors for taking physical possession of the secured assets, the details whereof finds mention in the said notice.

10. Vide order dated 11.10.2018, notice of the petition was directed to be issued to the respondent-corporate debtor.

11. The respondent-corporate debtor filed its reply vide Diary No.3359 dated 11.07.2019. The petitioner-financial creditor filed its rejoinder, vide Diary No.3758 dated 30.07.2019. The respondent-corporate debtor filed sur-reply vide Diary No.4331 dated 26.08.2019. Certain additional documents filed by the respondent-corporate debtor were allowed to be taken on record, vide order dated 13.12.2019 in CA No.1068/2019. Certain other documents were also filed by the respondent-corporate debtor on 04.02.2020, when the main petition was finally heard and orders were reserved.

12. The respondent-corporate debtor, *inter alia*, raised the following grounds, in support of its contention that the CP is liable to be dismissed.

(i) In view of the judgment of the Hon'ble Supreme Court of India in ***Dharani Sugars and Chemicals Limited Versus Union of India and Others; (2019) 5 Supreme Court Cases 480***, the instant CP is liable to be dismissed in *limine*.

- (ii) The CP is liable to be dismissed being barred by the period of limitation.
- (iii) The petitioner is not a financial creditor of the respondent, as the Assignment Agreement dated 10.12.2015 (Annexure P-1) basing on which the petitioner stated to have acquired the rights from Punjab National Bank, the original financial creditor, is insufficiently stamped and hence unenforceable.

13. We have heard the learned counsel for the petitioner and learned Senior counsel for the respondent and have perused the records.

14. The Hon'ble Supreme Court of India in ***Dharani Sugars and Chemicals Limited Versus Union of India and Others; (2019) 5 Supreme Court Cases 480***, whereunder Writ Petition (Civil) No.1438 of 2018 filed by the respondent-corporate debtor was also disposed of, by its common judgment dated 02.04.2019 held as under:-

“There is nothing to show that the provisions of Section 45L(3) have been satisfied in issuing the impugned circular. The impugned circular nowhere says that the RBI has had due regard to the conditions in which and the objects for which such institutions have been established, their statutory responsibilities, and the effect the business of such financial institutions is likely to have on trends in the money and capital markets. Further, it is clear that the impugned circular applies to banking and non-banking institutions alike, as banking and non-banking institutions are often in a joint lenders’ forum which jointly lend sums of money to debtors. Such non-banking financial institutions are, therefore, inseparable from banking institutions insofar as the application of the impugned circular is concerned. It is very difficult to segregate the non-banking financial institutions from banks so as to make the circular applicable to them even if it is ultra vires insofar as banks are concerned. For these reasons also, the impugned circular will have to be declared as ultra vires as a whole, and be declared to be of no effect in law. Consequently, all actions taken under the said circular, including actions by which the Insolvency Code has been triggered must fall along with the said circular. As a result, all cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular will be proceedings which, being faulted at the very inception, are declared to be non-est.

46. *In view of the declaration by this Court that the impugned circular is ultra vires Section 35AA of the Banking Regulation Act, it is*

unnecessary to go into any of the other contentions that have been raised in the transferred cases and petitions. The transferred cases and petitions are disposed of accordingly.”

15. A bare perusal of the above referred judgment of the Hon'ble Supreme Court of India clearly shows that actions in those cases in which debtors have been proceeded against by financial creditors under Section 7 of the Code, only because of the operation of the impugned Circular dated 12.02.2018 of the Reserve Bank of India, are declared as *non est*. The respondent-corporate debtor failed to show any document to suggest that the petitioner has filed the present CP under Section 7 of the Code, in view of the operation of the above referred RBI Circular dated 12.02.2018. Hence, the contention of the respondent, in this regard is unacceptable.

16. The instant CP has been filed on 25.05.2018. It is stated in Part 4 of Form-I that the date of default is 17.01.2014. Three years' period of limitation, hence expired on 16.01.2017. Respondent submits that the CP having filed on 25.05.2018 is clearly barred by the period of limitation. On the other hand, the petitioner's counsel submits that the respondent-corporate debtor in its 27th Annual Report 2016-17 dated 30.05.2017, acknowledged and admitted the debt due to the petitioner and hence the period of limitation, extended upto 29.05.2020 and since the CP having filed on 25.05.2018, is very well within the period of limitation. The petitioner further stated that as per Annexure P-71 statement of account of the respondent, it has made various payments from 31.03.2016 to 01.02.2018 towards the repayment of debt. Hence, the said payments also amount to acknowledgment of debt and accordingly, extends the period of limitation and therefore, the CP is well within the period of limitation. So far as admission and acknowledgement of debt in Annual Report 2016-17 dated

30.05.2017 is concerned, the same cannot save the limitation, as the date of annual report is admittedly beyond 3 years period from the date of default i.e. 17.01.2014. However, the various payments made by the corporate debtor starting from 31.03.2016 i.e. within 3 years from the date of default (17.01.2014) to 01.02.2018, definitely shift the period of limitation, for a further period of 3 years from 01.02.2018 and accordingly, we hold that the CP is within limitation.

17. It is not in dispute that petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 is maintainable by a financial creditor only. The original financial creditor of the corporate debtor was Punjab National Bank (**PNB**). The petitioner Edelweiss Asset Reconstruction Company Limited (**EARC**) stated to have become the financial creditor of the respondent basing on an Assignment Agreement dated 10.12.2015 (Annexure P-1) and accordingly, entitled to file the instant CP. The respondent by placing reliance on the order dated 18.11.2019 of the Joint Sub-Registrar-cum-Naib Tehsildar, Mallanpur, Dhakan (Ludhiana) Annexure A-2 to CA No. 1068/2019 and the restraint order of the Chief Controlling Revenue Authority-cum-Financial Commissioner (Revenue), Chandigarh, Punjab, in Misc. Application No. 24/2020 dated 03.02.2020 submit that the petitioner-EARC cannot be treated as the financial creditor of the corporate debtor company and hence, the CP is not maintainable.

18. It is the specific case of the petitioner EARC that the debt due to the PNB by the respondent-corporate debtor was assigned to it under the Annexure P-1 Assignment Agreement dated 10.12.2015 and by virtue of the same it has acquired all the rights of the PNB over the respondent-corporate debtor including the subject debt. It is also the case of the petitioner that the said Annexure P-1 Assignment Agreement dated 10.12.2015 was duly registered and duly stamped

and is valid and legally enforceable for all purposes. On the other hand, the respondent-corporate debtor contends that the said Annexure P-1 Assignment Agreement dated 10.12.2015 was insufficiently and inadequately stamped and hence, cannot be relied upon for any purpose including for the purpose of maintaining the instant CA in the capacity of a financial creditor of the corporate debtor company.

19. In view of the above rival submissions on the Annexure P-1 Assignment Agreement dated 10.12.2015, it is relevant to note the two documents on which the learned counsel for the respondent placed his reliance, before examining the law applicable thereto.

20. Annexure A-2 reads as under:-

P.T.O

OFFICE OF THE JOINT SUB REGISTRAR CUM-NAIB TEHSILDAR,
MULLANPUR DHAKAN, (LUDHIANA)
(RECOVERY BRACH)

Regarding taking of action under section 69 (Detention and Jail), Section 70 (Sale of Movable Property and crop) and Section 72 (Attachment of Property) of the Land Revenue Act, 1887.

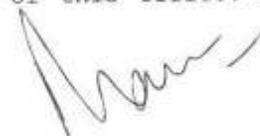
No. Dated 18.11.2019

versus

Edelweiss Asset Reconstruction Company Ltd. Edelweiss House Off. C.S.T. Road, Kalina, Mumbai 400098.

Sub:- Regarding deposit of short pyment of stamp duty/ registration fee against deed No. 1328 dated 5.02.2016.

Deed No. 1328 dated 5.02.2016 mentioned in the subject was got registgered by you in this office, on which as per rules and regulations you have not paid the required stamp duty and registration fee, due to which we have received an order from the District Collector, Ludhiana vide their letter bearing no. 3259-61/H.R.C dated 18.11.19 to recover an amount of Rs. 1,45,85,000/- (Rs. One crore fofty five lacs and eighty five thousand only) from you against the said deed on account of short payment of stamp duty and registration fee. Therefore you are directed to make the payment of balance amount within seven days from the date of receipt of this notice with the registration branch of this office. In



case of non-payment within this stipulated period, action shall be initiated against you under Section 69, 70 and 72 of the Land Revenue Act, 1887, for which you shall be held responsible.

Sd/-
Joint Sub Registrar,
Mullanpur Dhakan.

This information is provided under RTI Act, 2005.

Sd/-
Naib Tehsildar,
Mullanpur Dhakan.

21. The restraint order passed by the Chief Controlling Revenue Authority-cum-Financial Commissioner (Revenue), Chandigarh, Punjab in Misc. Application No. 24 of 2020 dated 03.02.2020 reads as under:-

P.T.O

86

Before the Court of Chief Controlling Revenue Authority
-cum-Financial Commissioner (Revenue), Punjab,
Chandigarh.

MISC. Appl. | 24 | 2020

In Re: Petition of Sh. Rajpal Singh Rathore, Authorized Signatory on behalf of M/s. Winsome Yarns Ltd, SCO 191-192, Sector, 34-A, Chandigarh.

This petition has been submitted by Sh. Rajpal Singh Rathore, Authorized Signatory on behalf of M/s. Winsome Yarns Ltd, SCO 191-192, Sector, 34-A, Chandigarh.

2. The applicant has stated that M/s Edelweiss Asset Reconstruction Company Limited (EARC), Registered Office at Edelweiss House, Office CST Road, Kalina, Mumbai-400098, is claiming to be the assignee of the Punjab National Bank by placing reliance on an Assignment Deed No. 1328 dated 10-12-2015, registered on 5-2-2016, purported to have been entered into between Edelweiss Asset Reconstruction Company Limited Trust No. 168 and Punjab National Bank (the "Assignment Deed"). The the applicant had filed an application for supply of information under Right to Information Act, 2005, as amended (the "RTI"), through its Officer on 19-11-2019. That in response to the above RTI Application dated 19-11-2019, the plaintiff received a reply dated 19-11-2019 from the office of Joint Sub Registrar-cum-Nalb Tehsildar, Mullanpur Dakha (Ludhiana), appending a letter dated 18-11-2019, informing the applicant that the Assignment Deed No. 1328 dated 10-12-2015, registered by



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87

payment of Stamp Duty and registration fee and calling upon them to pay an amount of Rs. 1,45,85,000/- (Rs. One crore forty five lac and eighty five thousand only). That it has also come to the knowledge of the applicant through RTI that the Naib Tehsildar, Dakha has written a letter bearing no: 1397 dated 04.12.2019 to District Magistrate/Deputy Commissioner seeking permission to initiate action against M/s Edelweiss Asset Reconstruction Company Limited (EARC), when they failed to respond to the Show cause notice issued to them. That, furthermore, EARC has wrongly placed reliance on the purported Assignment Deed dated 10.12.2015 to project the requisite locus-standi in order to prefer an Insolvency Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 bearing C.P No. (IB) 291 Chd/ CHD/2018 before the Hon'ble National Company Law Tribunal, Chandigarh (the "NCLT") and is misrepresenting itself as the Financial Creditor of the Plaintiff. That EARC has also placed reliance upon the purported Assignment Deed before Hon'ble Debt Recovery Tribunal (the "DRT") to file an Original Application bearing O.A No. 837/2018 under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 against the Plaintiff herein. That the Insolvency Petition bearing C.P. No. (IB) 291 Chd/CHD/2018 is pending before the Hon'ble NCLT is at the stage of final arguments and the next date of hearing in the said matter is 04.02.2020. That in view of

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the aforesaid facts and circumstances, as a matter of grave urgency given the pendency of the aforementioned proceedings before the Hon'ble NCLT in C.P. No. (IB) 291 Chd/CHD/2018, the matter being listed for final arguments on 04.02.2020, the applicant is moving the present Application. That it is submitted that grave prejudice and irreparable loss would be caused to the applicant if the instant Application is not allowed.

3. Representing the interest of the State, Senior State Counsel stated that as far as State is concerned, the matter was proper assessment, levying and collection of the Stamp Duty, rather than becoming a party to the dispute between the petitioner company and M/s Edelweiss Asset Reconstruction Company Limited (EARC), Registered Office at Edelweiss House, Office CST Road, Kalina, Mumbai-400098, claiming to be the assignee on behalf of Punjab National Bank. He stated that in absence of certified copy of the alleged Vasika No. 1328, dated 10-12-2015, the interest of the State could only be properly protected. He pleaded that proper adjudication of the Stamp Duty, if any, payable could not be adjudicate upon by the Chief Controlling Revenue Authority, acting u/s 56 of the Stamp Act, 1899.

4. He also drew attention of this Court to the case of Supreme Court of India reported as AIR 1968 SC 497, in which it has been conclusively laid-down that powers under Section 56 of

89

the Stamp Act, 1899 could also be exercised by the Chief Controlling Revenue Authority *sou-moto*, apart from acting on a formal reference of the Collector.

5. He also drew attention to the provisions of Section 35 of the Stamp Act, 1899, as per which an under-stamped or un-stamped document could not be admissible as evidence in a variety of legal proceedings, before any Statutory Authority. He stated that the objective of this provision was that no person should be allowed to take benefit of any purported document, unless full quantum of Stamp Duty had been duly paid.

6. The learned State Counsel also drew attention to the fact that the prescribed limitation under Section 47-A of the Stamp Act, 1899, had expired in-so-far as the Collector was concerned. However, the law did not lay down any such limitation for the Chief Controlling Revenue Authority to conclusively and authoritatively adjudicate upon the quantum of the Stamp Duty payable.

7. I have considered the totality of the circumstances. In my opinion, the prime objective of the Stamp Duty is to raise revenues for the State, as a fiscal measure. Merely because there is a dispute between the two parties litigating about the contentious document, should not act in way of the State embarking upon an authoritative adjudication of the Stamp Duty from the Chief Controlling Revenue Authority. Similarly, no party

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could be allowed to take benefit of any document, which is prime facie un-stamped and a preliminary liability to be Rs. 1,45,85,000/- (Rs. One crore forty five lac and eighty five thousand only)) has already been claimed by the State, apart from the interest component.

8. Under these circumstances, I deem it fair, just and reasonable to issue a notice to the District Collector, Ludhiana to submit a certified copy of the Vasika No. 1328, dated 10-12-2015 purported to have been registered by Sub Registrar, Mullanpur Dakha, District Ludhiana. The Collector shall also furnish his opinion regarding the quantum of Stamp Duty, if any, payable and, if so, by which party.

9. Simultaneously, notice is also issued to M/s Edelweiss Asset Reconstruction Company Limited (EARC), Registered Office at Edelweiss House, Office CST Road, Kalina, Mumbai-400098 to appear before this forum, through a duly authorized representative to contest the Stamp Duty liability, if any, that may be cast upon them, including any other liability / restraint arising out of these proceedings.

10. Prime facie from the averments made in the application, it is evident that potentially a huge liability of Rs. 1,45,85,000/- (Rs. One crore forty five lac and eighty five thousand only)) may have to be apportioned between the two signatory parties to the alleged document. Prima facie, it appears



91

that this documents is covered by the Statutory disability imposed by Section 35 of the Stamp Act, 1899 and it is hoped that any Statutory Authority shall not place any reliance on the alleged Vasika No. 1328, dated 10-12-2015 unless no objection / no due certificate from the District Collector, Ludhiana in respect of Stamp Duty is presented by the party adducing such document as evidence.

11. To come up on 19-2-2020 and restraint order shall be applicable till that date, unless the specifically extended further by this Court.

12. On the request of the petitioner, copy of this order may be given Dasti to the petitioner, whereas a copy shall also be sent to the District Collector, Ludhiana forthwith.


Chief Controlling Revenue Authority
03-02-2020

Special Chief Secretary-cum-
Financial Commissioner Revenue
Government of Punjab



22. A bare perusal of the above referred documents reveals that the concerned Revenue Authorities have found that the Annexure P-1 Assignment Agreement dated 10.12.2015 executed by PNB in favour of the petitioner-EARC was inadequately stamped and accordingly, it was directed to make payment of an amount of ₹1,45,85,000/- being the balance amount towards the insufficient stamp duty and registration fees on the Annexure P-1 Assignment Agreement dated 10.12.2015.

23. Section 35 of the Indian Stamp Act, 1899 provides that instruments not duly stamped are inadmissible in evidence and cannot be acted upon for any purpose. The relevant portion of the said Section is as under:-

“35. Instruments not duly stamped inadmissible in evidence, etc.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that—
(a) any such instrument⁶⁵ [shall], be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

24. The learned counsel for the petitioner advanced extensive arguments on the Power and Jurisdiction of the Revenue Authorities, who passed the above referred restraint orders on Annexure P-1 Assignment Agreement dated 10.12.2015 by referring to various provisions of the Indian Stamp Act, 1899, as applicable to the State of Punjab and the decisions thereon.

25. It is the settled principle of law that the Corporate Insolvency Resolution Process (**CIRP**) is not a money claim nor a suit or a litigation and the Adjudicating

Authority cannot decide the disputed questions of fact. It is also the settled principle of law that the Adjudicating Authority will not go into the aspects of the validity of an agreement or an order etc. and the Adjudicating Authority is not a Civil Court to decide such disputes between the parties. Needless to mention that this principle is applicable equally to both the sides. The issue on hand goes to the root of the maintainability of the CP as the entitlement of the petitioner-EARC to file the petition under Section 7 of the Code as a financial creditor of the corporate debtor is solely dependent on the enforceability of Annexure P-1 Assignment Agreement dated 10.12.2015. In normal circumstances, the presumption of the validity and enforceability goes in favour of the document on record. The onus of proving a document as invalid and unenforceable is heavily on the person who is challenging the said document. Bald allegations without sufficient basis cannot shift the onus from the person questioning the validity to the person placing reliance on a particular document. In the instant case, the respondent-corporate debtor by placing reliance on the above referred documents of the Revenue Authorities whereunder a categorical finding was given that the Annexure P-1 Assignment Agreement dated 10.12.2015 is inadequately stamped and that the petitioner was directed to pay an amount of ₹1,45,85,000/- towards the deficit stamp duty on Annexure P-1, able to shift the onus to the petitioner. In view of the summary nature of the CIRP proceedings, we cannot go into the submissions made by the learned counsel for the petitioner on the power, authority or jurisdiction of the Revenue Authorities to pass orders referred at Paragraph Nos.20 and 21 above with reference to various provisions of Indian Stamp Act, 1899 as applicable to the State of Punjab and the relevant judgments thereon. On the other hand, it is to be seen that the above referred orders of the

Revenue Authorities are subsisting as on today. The petitioner has not shown any stay order against the same, though contended that the aforesaid orders were challenged before a Higher Forum.

26. The decision of this Tribunal in ***Phoenix ARC Private Limited Vs. Sarbat Cottfab Private Limited, 2018 (146) SCL 552*** on which the learned counsel for the petitioner placed reliance, cannot be made applicable to the instant CP as the identical orders of the Revenue Authorities in the said case were stayed by the Hon'ble Apex Court but whereas in the instant CP no such orders of stay from any court are produced before us.

27. In ***Lalan Kumar Singh Vs. M/s Phonix ARC Private Limited and another, Company Appeal (AT) (Insolvency) No. 485 of 2018 dated 20.12.2018***, of the Hon'ble NCLAT the assignment deed was challenged on the ground that the assignment was against RBI Guidelines dated 23.04.2003 and that there were no orders passed by any Revenue Authority, holding that the assignment deed therein, was insufficiently stamped, and hence, the said decision, on which the learned counsel for the petitioner placed reliance also has no application to the present case.

28. In ***SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited, (2011) 14 Supreme Court Cases 66 and Garware Wall Ropes Limited Vs. Coastal Marine Constructions and Engineering Limited, (2019) 4 Supreme Court Cases 2019 or in Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanpalle, Decided on 14.03.2001, Case No. Appeal (Civil) 1800 of 2001*** and another, the Hon'ble Supreme Court of India while holding that an insufficiently stamped instrument cannot be relied upon for any purpose, however, observed that the concerned court has to follow the procedure

provided under the Indian Stamp Act, 1899 for impounding the instrument before permitting a party to enforce the said insufficiently stamped instrument.

29. However, this Adjudicating Authority under the summary procedure provided under the Code cannot adopt such a procedure applicable to regular courts of law. Once the respondent-corporate debtor by placing reliance on the orders of the relevant Revenue Authorities able to show that the Annexure P-1 Assignment Agreement dated 10.12.2015 is unenforceable and when the petitioner not disputed the existence of said orders and not able to produce any stay order thereof, this Adjudicating Authority has no other option except to reject the CP.

In the circumstances and for the aforesaid reasons, the CP is rejected.

Sd/-
(Pradeep R.Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

March 17th, 2020
Mohit Kumar/Yashpal