

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 467 of 2023

[Arising out of the Impugned Order dated 03.02.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in C.P.(IB) No.922/MB/C-1/2022]

In the matter of:

CATALYST TRUSTEESHIP LTD.

GDA House, First Floor, Plot No. 85
S. No. 94 & 95,
Bhusari Colony (Right),
Kothrud, Pune -411 038.

...Appellant

Versus

ECSTASY REALTY PVT. LTD.

2nd Floor, Solitaire Building, 80,
S.V. Road, Santacruz (West),
Mumbai 400054.

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha Ld. Sr. Counsel along with Mr. Ritesh Kumar, Mr. Ankit Banati, Mr. Aditya Shukla, Ms. Heena Kochar and Mr. Naman Gowda, Advocates.

For Respondent : Dr. Ashwani Kumar Ld. Sr. Advocate with Mr. Virag Gupta, Mr. Aman Kacheria, Ms. Shefali Sangwan, Ms. Sakshi Dube, Mr. Rishabh Dhanuka, Mr. Shaurya Tiwari, Mr. Vishal Mishra, Mr. Zeeshan Hashmi and Mr. Ankit Prashar, Advocates.

Mr. Sunil Trilokchandani and Ms. Drishti Bhindra,
Advocates for proposed respondent.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61(1) of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 03.02.2023 (hereinafter referred to as '**Impugned Order**') passed by the

Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in C.P.(IB) No.922/MB/C-1/2022. By the impugned order, the Adjudicating Authority has dismissed the Section 7 application filed by the Appellant seeking to initiate Corporate Insolvency Resolution Process (**“CIRP”** in short) against the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Catalyst Trusteeship Ltd.

2. Coming to the sequence of events the salient developments which needs to be noticed for deciding the issue at hand are as outlined hereunder:

- Ecstasy Realty Pvt. Ltd.-Corporate Debtor had passed a Board Resolution and Special Resolution on 20.03.2018 authorising the borrowing of funds by issue of 850 Non-Convertible Debentures (NCD) of an aggregate value of Rs 850 Cr. in two series namely Series-A and Series-B debentures.
- On 20.03.2018, Catalyst Trusteeship Ltd.-Appellant was appointed as the Debenture Trustee on behalf of the Debenture Holders with the Edelweiss group as the majority bond-holders holding 84.67% of the debentures. The Edelweiss group comprised of ECL Finance (**“ECLF”** in short), Edelweiss Investment Adviser Ltd and Edelweiss Rural and Corporate Services Ltd with vote share of 28.17%, 29.17% and 27.33% respectively.
- On 27.03.2018, a Debenture Trustee Deed (**“DTD-I”** in short) was executed between the Appellant-Catalyst Trusteeship Ltd. (**“CTL”** in short) and Corporate Debtor-Ecstasy Realty Pvt. Ltd. (**“ERPL”** in short).

- Following the execution of DTD-I, Series-A debenture were fully subscribed by Debentures Holders for an amount of Rs 600 Cr. On 28.03.2018, the entire amount of Series-A debentures was disbursed to the Corporate Debtor. The Series-B debentures amounting to Rs 250 Cr. were never issued.
- On 16.09.2019, the Appellant informed the Corporate Debtor that interest reserve requirement amounting to Rs 48.35 Cr. for quarter ending September 2019 had not been maintained and requested Corporate Debtor to restore the interest reserve.
- On 16.03.2022, the Corporate Debtor sent an e-mail to ECLF of Edelweiss group regarding restructuring proposal of the debentures and Blackrock (Sapphire Transaction) documentation. Confirmation was sought from ECLF on the going forward terms which included interest and principal moratorium of 18 months for the balance NCD; release of Bandra property from security package; release of Rs 25 cr simultaneously; bringing down of interest rate on balance payments to 14.5% p.a. and Rs 1 cr to be released from current escrow for stamp duty and other expenses.
- ECLF sent a communication on 23.03.2022 to Corporate Debtor that subject to completion of Sapphire transaction by 25.03.2022, they were agreeable to interest and principal moratorium of 18 months for the balance NCD and also release of Bandra property from security package. Accordingly, the Corporate Debtor approached India Credit Investment Fund-I (**ICIF**) on 23.03.2022 for completion of Sapphire transaction.

- On 28.03.2022, the Appellant also addressed a letter to the Corporate Debtor stating that subject to the receipt of Rs 152 cr of the Sapphire transaction, they would issue the release letter and No Dues Certificate.
- On 29.03.2022, Corporate Debtor by way of an email confirmed to ECLF regarding completion of Sapphire transaction and sought confirmation of restructuring proposal in respect of 18 months moratorium on principal and balance of DTD-I NCDs and release of Bandra plot of land.
- On 30.03.2022 an e-mail was sent by ECLF informing the Corporate Debtor that the Appellant had issued NOC to the Corporate Debtor in this regard and that the final structuring proposal would be provided in June 2022 for which they will run the entire process internally.
- The Appellant also disbursed Rs 9.33 Cr. in two tranches of Rs 5 Cr and Rs 4.33 Cr. to the Corporate Debtor on 30.03.2022.
- On 28.04.2022 a demand letter was sent by the Appellant to the Corporate Debtor for an amount of Rs 65.49 Cr. being overdue for payment on the debentures of DTD-I.
- On 29.04.2022, the Appellant sent a letter to the Corporate Debtor seeking documents etc. for purposes of internal processing and approval of the restructuring proposal. This was followed by another reminder letter on 17.05.2022 seeking payment of Rs 65.49 Cr. as overdue on debentures.
- On 19.05.2022, the Corporate Debtor addressed a letter to the Appellant stating that they had provided all data to Edelweiss prior to their confirming the restructuring proposal and advised the Appellant to

collect the data so furnished from Edelweiss. However, the Corporate Debtor also agreed to send all documents again without prejudice.

- On 06.06.2022, the Appellant informed the Debenture Holders regarding restructuring proposal received from the Corporate Debtor seeking their approval/rejection on the said proposal.
- On 10.06.2022, the Appellant informed the Corporate Debtor that the Debenture Holders had rejected the restructuring proposal by 94.84% vote share.
- On 30.06.2022, ECLF assigned their debt to Asset Restructuring Company (India) Ltd. by way of an Assignment Agreement.
- On 21.07.2022, the Appellant issued a Loan Recall Notice recalling the entire dues payable together with interest amounting to Rs 1203.55 Cr.
- On 27.05.2022, the Appellant filed a Section 7 application for admission of the Corporate Debtor into the rigours of CIRP before the Adjudicating Authority.
- On 03.02.2023, the Adjudicating Authority passed the impugned order dismissing the Section 7 application.

3. Making his submissions, Shri Abhijeet Sinha, Ld. Senior Counsel for the Appellant submitted that the Corporate Debtor which was in the business of providing real estate development services had resolved to borrow funds by way of issuing debentures in two series of Rs 600 Cr. and Rs 250 Cr respectively. For issue of private placement offer to the Debenture Holders, the Corporate Debtor-Respondent had entered into DTD-I on 27.03.2018 in which the Appellant was appointed as the Debenture Trustee acting for and on behalf on the Debenture

Holders. It was submitted that in terms of Clause 4.4 of the DTD-I, Corporate Debtor was liable to maintain an Interest Payment Reserve Account in Escrow with the Bank and was liable to pay interest to the Debenture Holders compounded quarterly. Since the Corporate Debtor had defaulted on successive occasions, the Appellant was constrained to issue a Recall Notice date 21.07.2022 to the Corporate Debtor demanding repayment of the principal amount of loan along with interest and default interest totalling Rs 1203.55 Cr. which was followed by filing of Section 7 application. The Section 7 application was erroneously dismissed by the Adjudicating Authority and aggrieved by the impugned order, this appeal has been preferred.

4. It was contended by the Appellant that the Adjudicating Authority had erroneously held that there was no occasion for debt and default on the pretext that a moratorium had come into place between the parties until September 2023. This conclusion of the Adjudicating Authority was misplaced since the alleged restructuring and moratorium was premised on discussions held between one of the Debenture Holders and the Corporate Debtor at a time when DTD-I and its terms could be modified only in terms of procedure prescribed under Clause 33. Since ECLF had only 28.17% of the debentures, it could not have decided on behalf of the other Debenture Holders. The Appellant as Debenture Trustee was responsible for protection of interest of all Debenture Holders and therefore the discussion between the Corporate Debtor and ECLF was not binding on the Appellant. It was contended that no moratorium had been granted since the procedure prescribed under Clause 33 of the DTD-I had not been followed for modification of the DTD-I. This was also the view taken in

the order passed by the Hon'ble Bombay High Court on 13.09.2022 which the Adjudicating Authority had chosen to side-step. Thus, when moratorium was not granted to the Corporate Debtor in terms of the DTD-I, the debt qua the Financial Creditor had become due and payable. In the facts of the case, the Corporate Debtor ought to have been admitted into CIRP in terms of Section 7 of IBC. That the Corporate Debtor has not disputed the fact that it had availed funds by issuing NCD's, clearly established the existence of debt. Furthermore, since the Corporate Debtor had defaulted in repaying the debt, the question of debt and default stood established. Reliance was placed on the judgment of the Hon'ble Supreme Court in the matter of ***M. Suresh Kumar Reddy Vs Canara Bank (2023)8 SCC 387*** wherein it was held that once the Adjudicating Authority is satisfied that default has occurred, there is hardly any discretion to refuse admission of a Section 7 application.

5. It is also contended by the Appellant that since the DTD-I was executed between the Appellant in their capacity as Debenture Trustee on behalf of all Debenture Holders and the Corporate Debtor, communications exchanged between the Corporate Debtor and ECLF alone cannot be construed to have led to a modification of the terms of DTD-I. This modification was only possible by following Clause 33 of the DTD-I which stipulated that modification of DTD-I would require approval of two-third majority of the Debenture Holders. Since the process under Clause 33 of the DTD-I was not an empty formality, the Appellant had therefore acted in a transparent manner and put up the restructuring and moratorium proposal to the Debenture Holders for their consideration. On consideration of the said proposal, the Edelweiss Group of Companies including

ECLF and some other Debenture Holders had rejected the restructuring proposal of the Corporate Debtor. Under such circumstances, it was erroneous for the Adjudicating Authority to have held that the DTD-I terms had been modified allowing moratorium. Assertion was made that even the Corporate Debtor was fully aware that restructuring/moratorium could not have been granted without the requisite approval by the Debenture Holders. The fact that the Corporate Debtor had sent their restructuring proposal to the Appellant clearly show that in terms of their own understanding, grant of moratorium required modification of the DTD-I, for which modification, the process as specified under the DTD-I was required to be followed. The Adjudicating Authority also failed to take into account the decision of the Hon'ble High Court of Bombay dated 13.09.2022 which had returned the finding that the grant of moratorium from repayment under the DTD-I would have required modification of the terms of DTD-I. The impugned order is therefore in the teeth of the order of the Hon'ble High Court of Bombay.

6. It was also submitted that the claims made by the Corporate Debtor that it was financially solvent was immaterial since the Corporate Debtor did not place on record any document to substantiate its claims of financial insolvency. The Project Valuation Reports relied upon by the Corporate Debtor referred only to projected profits expected to be earned from real estate project being constructed by them but basis such estimations of profit, Corporate Debtor cannot substantiate their solvency status of the Corporate Debtor. The Appellant debunked the contention of the Respondent that the Corporate Debtor was solvent for if that was the case there would not have arisen default in the

repayment of loans. It was also contended that even for argument's sake, it was accepted that the moratorium was allowed till 2023, it remains unexplained as to why the Corporate Debtor did not clear the outstanding debt even till date in 2025. Thus, the intent of Corporate Debtor for resolution was not genuine. It is contended that in Section 7 application, all that has to be seen is whether there is debt which was due and payable and that there has been a default in repayment. No other defences need to be noticed by the Adjudicating Authority while admitting a Section 7 application. It was therefore contended that the Adjudicating Authority had passed a non-speaking order and exhibited perversity in holding that the Appellant was trying to use the IBC mechanism as a tool for recovery and not for the purpose of resolution of the Corporate Debtor.

7. Refuting the arguments canvassed by the Appellant, Dr. Ashwani Kumar, Ld. Sr. Counsel for the Respondent submitted that the prayer of the Appellant for initiation of CIRP against the Corporate Debtor is unsustainable since no payments were due and payable by the Corporate Debtor in view of the fact that moratorium had been granted to the Corporate Debtor from making any further payments until September 2023. It was submitted that the Respondent and ECL had executed "Head of Terms" under which the Edelweiss Group of Companies had agreed to provide the Corporate Debtor with loan facility of Rs 1350 Cr. against which an amount of Rs 600 Cr. had been disbursed. Admittedly due to gruelling adverse impact on real estate business due to Covid, the Corporate Debtor was facing financial difficulties in timely debt servicing. To tide over its financial difficulties, the Corporate Debtor had approached the Edelweiss Group to restructure the loan facility and by an e-mail dated 16.03.2022 confirmation

had been sought from the Edelweiss Group whether it was agreeable to *inter alia* extending moratorium for principal and interest of 18 months for the balance NCD under the DTD-I besides release of mortgage in respect of Bandra property and release of Rs 25 Cr. to the Corporate Debtor. It was further pointed out that the Edelweiss Group by their e-mail dated 23.03.2022 informed that they were agreeable to the request of the Corporate Debtor for restructuring of the facility and release of Bandra plot subject to completion and closure of the Sapphire transaction. It was therefore asserted that the Edelweiss Group which was the majority Debenture Holder having 84.67% majority share had already extended moratorium and therefore no amounts were due and payable till September 2023. Coming to the decision of the Hon'ble Bombay High Court in the context of a Commercial Suit filed by the Corporate Debtor on whether moratorium was in place, it was pointed out that the interim orders of the Hon'ble Bombay High Court having been challenged by the Corporate Debtor and disposed of basis the submission made by the Corporate Debtor to amend the plaint and seek fresh interim reliefs, these observations cannot be taken as binding. In support of their contention, reliance has been placed on the judgement of Hon'ble Supreme Court ***State of Assam vs Barak Upatyaka D.U Karamchari Sanstha (2009) 5 SCC 694*** wherein it was held that an interim order which does not finally and conclusively decide an issue cannot be a precedent.

8. Submission was pressed that following the exchange of a number of communications between the Corporate Debtor and the ECLF and the understanding arrived between them that the DTD-I had been amended, to which understanding the Appellant was also an active party, the Respondent

started acting thereon. Pursuant to the communication of 23.03.2022, the Corporate Debtor approached ICIF which was another financial instrumentality of the Edelweiss Group for fund of Rs 152 Cr. and secured it with a charge on 18 flats in Project-1 as well as receivable of Rs 4.42 Cr. from the sale of flats in Project-1. The Corporate Debtor undisputedly completed the Sapphire transaction with ICIF. Upon receipt of the funds from ICIF, the Corporate Debtor transferred the entire amount of Rs 152 Cr. to the Edelweiss Group through the Appellant. On 28.03.2022, the Appellant also addressed a letter to the Corporate Debtor stating that subject to the receipt of Rs 152 cr of the Sapphire transaction, they would issue the release letter and No Dues Certificate. The Appellant had also acted in furtherance of the agreement towards the restructuring proposal and had released the mortgage on the Bandra plot besides transfer of Rs 9.33 Cr. to the Corporate Debtor. It was also asserted that this reciprocal conduct clearly shows that the Edelweiss Group of Companies and the Appellant were on the same page with the Corporate Debtor regarding conclusion of the Sapphire transaction and the resultant grant of moratorium.

9. However, after the Respondent had fulfilled all steps due for performance on their part as contemplated in their discussion/interaction with majority debenture holders as well as the Appellant on restructuring and moratorium with the deposit of Rs 152 cr., the Appellant instead of living up to their commitments clearly reneged on these commitments by contending that any amendment of the DTD-I required two thirds majority in terms of Clause 33 of DTD. The Appellant and majority debenture holder had thus contrived to build a smokescreen for coercive recovery on procedural technicalities even after

having agreed to moratorium in clear and specific terms in writing. It was vehemently contended that this duplicitous behaviour on the part of the Appellant and the majority debenture holder was with the intent to heap financial ruin on the Corporate Debtor and push it into the throes of corporate death. This clearly reflects the malafide intent and machinations on the part of the Appellant and majority debenture holders to financially cripple the Corporate Debtor and pave the way for a takeover of their valuable assets. Though IBC is a beneficial legislation and a tool meant for corporate revival, yet the Appellant resorted to the provisions of IBC to push a solvent Corporate Debtor into insolvency. That the motives of the Appellant were pernicious and predatory is also borne out from the fact that against a loan disbursed of Rs 600 Cr. against which nearly Rs 508 Cr. was already repaid, yet the Appellant in the Section 7 application had pegged the outstanding dues to Rs 1208 Cr. which was highly inflated and an unconscionable demand. The impugned order has therefore rightly held that the Section 7 application was for purposes other than resolution of the Corporate Debtor.

10. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully. The two questions which fall for our consideration is whether there was debt which was due and payable by the Corporate Debtor qua the Appellant with incidence of default and whether the Section 7 application was filed with the intent of insolvency resolution or otherwise.

11. It is the case of the Appellant that the defence taken by the Corporate Debtor that one of the Debenture Holders-ECLF had granted a moratorium from

repayment under the DTD-I was not tenable. It has been pointed out by the Appellant that Edelweiss group had three entities including ECLF. It was contended by the Appellant that the other two entities namely Edelweiss Rural and Corporate Services Ltd. and Edelweiss Investment Advisor Ltd. also formed part of Edelweiss Group and both of them were vested with a separate and distinct identity. Hence the consent of one entity i.e. ECLF with 28.17% holding cannot be treated as consent of the other two Edelweiss Debenture Holders. It was pointed out that clubbing of the other two Edelweiss entities with ECLF by the Corporate Debtor cannot be accepted since the ECLF was not authorised to act on behalf of Edelweiss collectively. The Appellant in its role as Debenture Trustee was bound by the decision taken by the majority of the Debenture Holders and could not have been guided by communications exchanged between the Corporate Debtor and one Debenture Holder. Even if the Respondent was negotiating a restructuring proposal with the Edelweiss Group, the same did not relieve the parties of their respective obligations under the DTD-I and the binding nature of the procedure laid down therein in Article 33 for modification of the terms of DTD-I. Deviation from the standard process laid down under the DTD-I cannot be allowed. Hence, the Appellant placed the restructuring proposal including moratorium of the Corporate Debtor in terms of DTD-I before the Debenture Holders, which proposal had been rejected by 94.84% of Debenture Holders including all the Edelweiss entities. It was further contended that a close look at the e-mails exchanged between the Corporate Debtor and ECLF would also reveal that the ECLF had never categorically admitted that moratorium had

been granted. Rather ECLF had consistently maintained the position that restructuring/moratorium was yet to be finalized.

12. The Respondent-Corporate Debtor pressed their rival submission that there was categorical admission on grant of restructuring and moratorium of 18 months on the part of the majority Debenture Holders-Edelweiss Group holding 84.67% of the debentures. ECLF was in regular correspondence with the Appellant in this regard and therefore there is no reason to doubt that the Appellant was not conscious or abreast of the fact that the restructuring proposal and moratorium had been agreed upon. The Appellant had complete knowledge of the restructuring proposal agreed between the Corporate Debtor and ECL Group. The Appellant was privy to the restructuring discussion between the Debenture Holder and the Corporate Debtor. The Appellant being only a Debenture Trustee, it had a bounden obligation to act upon the approved instructions of the Debenture Holders. The contention of the Appellant that the proposal of the Corporate Debtor for restructuring the facility was not approved by the Debenture holders was only an afterthought which was adopted after the closure of the Sapphire transaction to orchestrate a default situation.

13. Coming to our analysis and findings, at this stage, we may quickly peruse the communications exchanged between the Appellant, Corporate Debtor and the majority Debenture Holder to see whether there was any understanding arrived between them on a restructuring and moratorium proposal of the Corporate Debtor and the terms and conditions set out, if any, for this purpose.

14. It is an undisputed fact that a restructuring proposal was communicated by Corporate Debtor to ECLF on 16.03.2022 and the email is as reproduced below:

“From: Kishor . [mailto:kishor@raiaskaran.com]
Sent: 16 March 2022 09:52
To: SaahilDugar-Alternatives <Saahil.Dugar@edelweissalts.com>
Subject: Re: Raiaskaran – Pendencies

Dear Saahil,

I spoke to Mr. Rajan and discussed the documentation and he has assigned the professionals so we could get a quick turnaround in the documentation process related to blackrock.

We require the going forward terms confirmed in writing from edelweiss as under:

- 1. Interest and Principal moratorium of 18 months for the Balance NCD.*
- 2. Bandra property unwound from security package.*
- 3. Rs 25 crores to be released simultaneously.*
- 4. Int rate on balance payments brought to 14.5% pa.*
- 5. Rs 1 cr to be released from current escrow for stamp duty and other expenses.*

Kindly do confirm to us by return mail, so that we can continue the documentation process for Blackrock.

Regards

Kishor

(Emphasis supplied)

15. When we look at the above email, it is clear that the Appellant had set out their clear intent along with the terms for the restructuring proposal including the Sapphire (Blackrock) transaction. It is noteworthy that they clearly mentioned that they required “*the going forward terms confirmed in writing from edelweiss*”.

16. There is also no dispute that ECLF sent their response on 23.03.2022 to the restructuring proposal which is as reproduced below:

On Wed, Mar 23, 2022 at 8:02 PM Saahil Dugar - Alternatives <Saahil.Dugar@edelweissalts.com> wrote:

Dear Kishore,

As discussed we are agreeable to the following, subject to completion of the current Sapphire transaction and disbursement by 25th March latest:

1. Release of Bandra plot

2. Restructuring will be provided on the balance original NCDs - Moratorium for principal and interest of 18 months (Repayment will start Sept 2023 onwards)

Regards,

Saahil Dugar

(Emphasis supplied)

17. When we peruse the above mail of 23.03.2022, it is crystal clear that a categorical response was sent by the ECLF stating that they were “agreeable” to the restructuring proposal “*subject to completion of the current Sapphire transaction*” and that in return they inter-alia agreed that “*repayment will start Sept 2023 onwards*”. It is clear from the e-mail of 23.03.2022 that the Debenture Holders consented to grant of moratorium to the Corporate Debtor until September 2023 subject to Sapphire transaction.

18. This brings us to the contention of the Appellant that they were unaware of any such discussion on the restructuring and moratorium proposal going on between the Corporate Debtor and ECLF/Edelweiss. This contention is belied when we peruse a letter from the Appellant to the Corporate Debtor emanating also on 28.03.2022 which is as extracted below:

Date: 28 March 2022

To,

(I) Ecstasy Realty Private Limited ("Borrower")
2nd floor Solitaire Building,
80, SV Road, Santacruz (W),
Mumbai-400 054

(II) Mr. Shobhit Jagdish Rajan ("Guarantor")
Nalvedya, 85 Carter Road,
Bandra, Mumbai-400050

Dear Madam/ Sir,

Sub: No Objection Certificate (NOC)

1. We refer to your request wherein you have sought no objection for (i) Issuance of redeemable, non-convertible debentures of an aggregate amount of Rs. 152 Crores (Rupees One Hundred Fifty Two Crores Only) ("NCDs") by Ecstasy Realty Private Limited; (ii) for creation of mortgage and charge over the security set out in the Schedule hereto by Ecstasy Realty Private Limited; (iii) to Mr. Shobhit Jagdish Rajan, to provide their guarantee to secure the NCDs; and (iv) to carry out other ancillary tasks for the successful completion of the proposed issuance of non-convertible debentures including issuance of the NCDs, making any amendments as may be needed to the constitutional documents and all other actions as may be required under applicable laws or as required by the new creditors to give effect to the issuance of NCDs.

2. We, the Debenture Trustee in respect of the financial assistance in the form of non-convertible debentures to the extent of Rs. 850 Crores (Rupees Eight Hundred Fifty Crore Only) ("Financial Assistance") issued/to be issued by Ecstasy Realty Private Limited in terms of the debenture trust deed dated 27th March 2018, do hereby grant our no objection (i) for issuance of redeemable, non-convertible debentures of an aggregate amount of Rs. 152 Crores (Rupees One Hundred Fifty Two Crores Only) ("NCDs") by Ecstasy Realty Private Limited; (ii) for creation of mortgage and charge over the security set out in the Schedule hereto by Ecstasy Realty Private Limited; (iii) to Mr. Shobhit Jagdish Rajan, to provide their guarantee to secure the NCDs; and (iv) for carrying out other ancillary tasks for the successful completion of the proposed issuance of non-convertible debentures including issuance of the NCDs, making any amendments as may be needed to the constitutional documents and all other actions as may be required under applicable laws or as required by the new creditors to give effect to the issuance of NCDs and the security stipulated thereunder.

3. The Financial Assistance was inter alia, secured by way of mortgage and charge over the said property set out in the Schedule hereto. We hereby agree and confirm that upon receipt of the Rs.152 Crores (Rupees One Hundred Fifty-Two Crores Only) from or on behalf of Ecstasy Realty Private Limited in the Escrow Account, we will immediately release the charge over the said property set out in the Schedule hereto.

4. Further, in receipt of the outstanding amount, we will also issue the release letter and no dues certificate, execute necessary discharge deeds, provide full cooperation and assistance in filing necessary charge forms with ROC and CERSAI for discharge of debentures.

5.

Yours faithfully,

For Catalyst Trusteeship Limited

CC: (1): Debenture Trustee for the Proposed Debentures

(2): Debenture Holders

(Emphasis supplied)

19. That the Appellant was aware of the restructuring proposal is amply borne out from the contents of the above communication of 28.03.2022 wherein there is also a clear advertence to the fact that the Corporate Debtor was seeking a NOC from them and that they had agreed and confirmed that upon receipt of the Rs.152 Cr from the Corporate Debtor in their Escrow Account, they would issue the requisite NOC. Interestingly, the letter is also marked to all debenture holders which reaffirms the fact that the Debenture Holders and the Appellant-Debenture Trustee were keeping each other informed of their intent on the modalities of how to proceed with the restructuring and moratorium proposal. The exchange of these correspondences unambiguously shows that prior to the finalisation of the Sapphire transaction, the Corporate Debtor, the Appellant and the Edelweiss Group were in discussion regarding the restructuring and moratorium proposal and the term sheet. These correspondences manifest the clear intention between them with regard to restructuring of debt and moratorium and the reciprocal steps to be taken by them. We are therefore persuaded to believe that it was always in the notice and knowledge of the Appellant that the Corporate Debtor and the Edelweiss Group were negotiating

a restructuring proposal. We also find that these correspondences and reference to various discussions between the parties mentioned in the letters were part of the record before the Adjudicating Authority.

20. This brings us to the next stage as to how the parties acted thereupon on the emails of 16.03.2022 and 23.03.2022. There is a communication dated 23.03.2022 by the Corporate Debtor informing the Appellant that they had approached ICIF for availing Rs 152 cr towards completion of Sapphire transaction and requested for NOC from the Appellant including release of charge. The said email is as seen below:

Date 23/03/2022

*To,
Catalyst Trusteeship Ltd.,
Mittal Tower,
Nariman Point,
Mumbai-400021*

Dear Sir/Madam,

Sub: NOC for availing 16.25% NCD of Rs 152 Crore from India Credit Investment Fund-I and release of charge on 18 flats and receivables of sold flats.

We have approached India Credit Investment Fund -I for availing 16.25% NCD of Rs 152 Crore against the charge on 18 flats of Phase 1 and receivables of sold flats aggregating Rs 4.42 Crore as per Annexure attached. The said facility is availed for payment of existing dues and for other group project related expenses.

Kindly issue the NOC for availing the facility of Rs 152 crore from India Credit Investment Fund -I and for release of charge on the 18 flats and sold receivables aggregating Rs 4.42 Crore at the earliest.

Thanking you,

For Ecstasy Realty Private Limited

*Mr. Pulin Bole
Director*

(Emphasis supplied)

21. We notice that the Corporate Debtor having shouldered their part of the burden by taking fresh loan from ICIF and injecting the same to the escrow account of the Appellant as per agreed terms also sent an e-mail on 29.03.2022 to ECLF confirming the Sapphire transaction and requesting for release of charge on Bandra plot and extension of moratorium. The said communication pointing out the conclusion of the Sapphire transaction is also on record and is as reproduced below:

From: Kishor [mailto:kishor@ralaskaran.com]

Sent: 29 March 2022 22:56

To: Saahil Dugar - Alternatives <Saahil.Dugar@edelwelssalts.com>

Cc: Accounts <accounts@ralaskaran.com>

Subject: Re: Ralaskaran - Confirmation on restructuring and Bandra release

Dear Saahil,

In reference to the enclosed mail, kindly note that we have adhered to all your stipulated conditions and completed the Sapphire transaction.

The release of Bandra property, as communicated to us, we understand that you have today conveyed to Catalyst to provide the NOC for release of Bandra property. We await their NOC for the same. Please provide to us urgently the release letter from. Catalyst as it is required to book sales prior to March 31st as had been communicated to you by Mr. Rajan. We are on March 30th tomorrow and this issue is causing us a lot of internal stress.

Regarding the restructuring of the balance original NCDs, as earlier confirmed vide email to us, request you to provide the extension of moratorium of 18 months for Interest and principal of the balance original NCDs in the first week of April 2022. The same needs to be communicated to BSE and SEBI at the earliest, since it's appearing now in the system that we have defaulted on the principal of the original NCD and it would severely affect raising funds in our group companies, thus defeating the very purpose of doing the Sapphire transaction.

Kindly revert at the earliest on the same.

(Emphasis supplied)

22. We next come to the response from the Appellant and ELCF to the above two emails of the Corporate Debtor. The Appellant sent their response on 29.03.2022 which is as below:

Date: 29th March 2022

To,

- 1. Variegate Realestate Private Limited
Velocity, 31, Turner Road,
Bandra (West), Mumbai – 400050*
- 2. Ecstasy Realty Private Limited
2nd floor Solitaire Building,
80, S.V Road, Santacruz (W),
Mumbai - 400 054*
- 3. Mr. Shobhit Jagdish Rajan
Naivedya, 85 Carter Road,
Bandra, Mumbai - 400050*

Dear Sir,

Release of Charge

Please refer to your request letter dated March 27, 2022 whereby, you have requested us to release our charge and mortgage on the Immovable properties as more specifically described In Annexure 1 hereto, which mortgage was created by Variegate Realestate Private Limited by way of Indenture of Mortgage dated September 11, 2018 bearing registration no. 4847 of 2018 to secure the non - convertible debentures of Rs. 850 crores issued by Ecstasy Realty Private Limited.

We have examined your request referred above and accordingly release our charge and mortgage on the immovable properties as more specifically described in Annexure 1.

Yours Faithfully

For Catalyst Trusteeship Limited

23. There was even a response from the ELCF which is as extracted hereunder:

*RE: Ralaskaran - Confirmation on restructuring and Bandra release
Saahil Dugar - Alternatives <Saahil.Dugar@edelweissalts.com>*

To: "Kishor." <kishor@ralaskaran.com>

Cc: Accounts <accounts@ralaskaran.com> Wed, Mar 30, 2022 at 10:37 AM

Dear Kishore,

The Catalyst NOC was issued to you yesterday itself. In case of any issues with the date of the NOC, please reach out to the trustee and they will do the needful.

With regards to restructuring, we have already communicated that we are ok to provide extension. However as communicated earlier, we will need to run the entire process internally based on the overall resolution plan. The final restructuring approval will be provided around the month of June.

24. Basis the above two responses, it has been contended by the Corporate Debtor that following the conclusion of the Sapphire transaction, the Appellant on the instructions of the ECLF had started acting on their part of obligations in terms of the restructuring proposal as is borne out from the issue of NOC in respect of the Bandra plot. It is however the contention of the Appellant that the release of the Bandra property was on account of Clause 28.3 of the DTD which allowed for release of the property if the Corporate Debtor repaid Rs 50 Cr. and that the release of the said property was not connected in any manner either to the restructuring proposal or grant of moratorium. However, when we run our eyes through the response from the Appellant and ELCF in their communications of 29.03.2022, the pointer is to the contrary. Coming to the communication of 30.03.2022 from ELCF to the Corporate Debtor regarding the release of the charge on the property by the Appellant in the context of conclusion of Sapphire transaction, the letter clearly informs the Corporate Debtor that NOC requested by them had been issued by Appellant a day earlier. It is therefore clear that the Bandra plot had been released only upon receipt of instructions from the ECLF in furtherance of the agreement towards modification

of DTD-I. There is no mention of Clause 28.3 of the DTD in the communications of 29.03.2022. This indicates that the Appellant and the Debenture Holders were at ad-idem and acting in concert on the actionable steps to be taken by them consequent upon the restructuring and moratorium proposal coming into play. We further notice that there is not only an unequivocal confirmation on the part of the Appellant for release of charge and mortgage on the immovable properties but that the Appellant had even filed the Memorandum of Satisfaction of Charge on the RoC portal as part of the restructuring proposal. Further this letter of release of charge was also communicated to Variegate Realestate which was a sister concern of the Corporate Debtor though it was not a party to DTD-I. This shows that the Appellant had even expressly communicated to a third party of their intent to act and implement the restructuring proposal. Hence the reference to Clause 28.3 is clearly a feeble defence and an afterthought on the part of the Appellant which deserves scant regard.

25. It has been further submitted by the Respondent that there were other steps taken by the Appellant which show that they were acting in compliance of the restructuring and moratorium proposal. We notice that the Appellant had remitted an amount of Rs 9.33 Cr. to the Corporate Debtor in two tranches of Rs 5 Cr. dated 25.03.2022 and Rs 9.33 Cr. dated 29.03.2022. The release of the amount of Rs 9.33 Cr. can be evidenced from the bank statement of the Corporate Debtor which fact has not been controverted by the Appellant. The Appellant has contended that the amount of Rs 9.33 Cr. was released to the Corporate Debtor towards project expenses upon instructions from the Debenture Holders following a request received from the Corporate Debtor and

therefore this amount was not a fresh disbursal and cannot be looked upon as integral to the restructuring proposal. It is the contra case of the Corporate Debtor that this release was to meet their request for release of Rs 25 Cr. as part of the restructuring proposal. It was argued that only because the Appellant was aware that moratorium had been granted to the Corporate Debtor and no payment was due from them that the Appellant had disbursed Rs 9.33 Cr. There was no cogent reason for the Appellant to have disbursed this amount if the Corporate Debtor was still in default. We find logic in the contention of the Respondent that no right-minded Financial Creditor could have disbursed further loan to the Corporate Debtor once they were declared to be NPA. This lends credibility to the contention of the Corporate Debtor that the disbursements were made since moratorium and restructuring had been agreed to.

26. We are therefore of the considered view that the Appellant and the Debenture Holders by their express conduct had agreed to implement the restructuring and moratorium proposal. No material has been placed on record to show that the Appellant had ever questioned the ECLF on the instructions being issued by them in furtherance of the moratorium. Neither did the Appellant ever question the ECLF that they cannot speak on behalf of the other entities of the other Edelweiss group.

27. That the ECLF had also acted in furtherance of restructuring proposal is also borne out from their above communication of 30.03.2022 wherein they have stated that that final restructuring proposal “*will be provided*” around the month of June. The words “*will be provided*” is undoubtedly a positive affirmation and it would be misconceived to construe otherwise.

28. The Ld. Sr. Counsel for the Respondent has relied on the judgement of Hon'ble Supreme Court in ***Indus Biotech Private Ltd. Vs. Kotak India Venture (Offshore) Fund (2021) 6 SCC 436*** to contend that a duty is cast on the Adjudicating Authority to ascertain the existence of default and exercise its satisfaction as to whether the Section 7 petition is fit for admission. The relevant paragraph of the said judgment is reproduced below:

“In the process of consideration to be made by the adjudicating authority as to whether a default has been committed so as to warrant invocation of IBC, the facts of the particular cases are to be taken into consideration before arriving at a conclusion as to whether a default has occurred even if there is a debt in strict sense... therefore the adjudicating authority certainly would make an objective assessment of the whole situation before coming to a conclusion as to whether the petition under section 7 IBC is to be admitted in the factual background.”

29. It flows from the ***Indus Biotech judgment supra*** that the Corporate Debtor was entitled to point out that debt is not due and that default has not occurred and that the Adjudicating Authority was also required to make an objective assessment in concluding whether the Section 7 petition was admissible in the given factual matrix. Given the present facts and circumstances of this case, we find that there is enough substance to believe that ECLF and the Appellant were acting in tandem to act upon and implement the restructuring proposal as agreed upon by them with the Corporate Debtor. The intent and purpose of making the Corporate Debtor enter into the Sapphire transaction was to provide financial flexibility to the Corporate Debtor to facilitate them to service their debt obligations under the restructured plan. With the conclusion of the Sapphire transaction, the moratorium had come into force. Hence, there was no debt due or payable until September 2023. That being so

there was no question of any default having been committed by the Corporate Debtor. In the present case, the Adjudicating Authority therefore did not commit any mistake in going through the fact situation of the present case and come to the finding that with the conclusion of the Sapphire transaction, the restructuring and moratorium proposal had commenced. Thus, to answer the first issue for our consideration we are of the view that the Adjudicating Authority had correctly held that on account of moratorium being in place, there was no occasion for default and hence the Section 7 application was not fit for admission.

30. This brings us to the second issue for our consideration as to whether the purpose of the Section 7 application in the present case was with the intent of insolvency resolution of the Corporate Debtor or otherwise. It is the contention of the Appellant that when there is a case of debt and default, there is no need for the Adjudicating Authority to look into other aspects at all. The Appellant has therefore assailed the impugned order since it has wrongly held that the purpose of the Section 7 application in the present case was not with the intent of insolvency resolution of the Corporate Debtor.

31. Per contra it is contended by the Corporate Debtor that they were made to complete the Sapphire transaction on the pretext that their due would be restructured. It was submitted by the Respondent that in their reply affidavit before the Adjudicating Authority they had pointedly stated at paras 2.25 and 6 that the Debenture Holders/Debenture Trustee had induced the Corporate Debtor to take a loan of Rs 152 Cr. and transfer it to the Appellant. But once the said amount was received, the Appellant and Edelweiss Group resiled on their

promise to extend moratorium and instead took steps to financially cripple the Corporate Debtor. It was pointed out that the Rejoinder Reply of the Appellant thereto was bald and evasive and there was no specific denial thereto. It is also the case of the Corporate Debtor that the Appellant and Debenture Holders acted in cahoots to down-grade the credit rating of the Corporate Debtor. Though money was available in the escrow account of the Corporate Debtor, the Appellant deliberately did not appropriate the same to defray interest payments therefrom. Even the cheques for interest payments were deliberately deposited with a delay of one day so as to create a scenario of default on the part of the Corporate Debtor to down-grade their credit rating. Thus, the default was not the make of the Corporate Debtor but was induced by the Appellant. It was contended that the interest rate was also unilaterally increased from 14% to 15% on 27.03.2018 and later increased to 16.25% by the Appellant. The intent behind deliberately down-grading the credit rating of the Corporate Debtor and hiking of interest rate was to heighten the indebtedness of the Corporate Debtor and restrict their scope of availing funding from third parties for their project. Submission was also pressed that though in terms of DTD-I a loan of Rs 1350 Cr. had to be released for which adequate security to secure the loan had been provided for by the Corporate Debtor, however, less than half the amount had actually been disbursed. Against a disbursement of Rs 600 cr, the Corporate Debtor had already repaid Rs 508.48 Cr. including principal and interest. Yet the Appellant had grossly inflated their claim in the Section 7 application. Thus, the Appellant was trying to push a completely solvent company having substantial assets into insolvency. The Respondent has relied on the judgement of Hon'ble

Supreme Court in ***Dena Bank Vs. C Shivakumar Reddy (2021)10 SCC 330*** to contend that coercive measures against Corporate Debtors goes against the spirit and ethos of the IBC which is a beneficial legislation to bring back the Corporate Debtor on its feet without dissipating the value of the assets of the Corporate Debtor. The relevant paragraph of this judgment is as reproduced below:

“85. Relegation of creditors to the remedy of coercive litigation against the corporate debtor could be detrimental to the interest of the corporate debtor and its creditors alike. While multiple coercive proceedings against the corporate debtor in different forums could impede its commercial/business activities, deplete its cash reserve, dissipate its assets movable and immovable and precipitate its commercial health.”

32. When we look at the sequence of events, we find that in close proximity to the period post the conclusion of the Sapphire transaction and deposit of Rs 152 Cr. by the Corporate Debtor with the Appellant, a Demand Notice was sent by the Appellant on 28.04.2022 to the Corporate Debtor to clear the outstanding redemption payment to the tune of Rs 65 Cr. This Demand Notice was served in the midst of several steps already having been taken in pursuance of communications exchanged between the Appellant, ELCF and the Corporate Debtor regarding restructuring proposal and grant of moratorium. Though the Edelweiss Group on the conclusion of the Sapphire transaction had sent a communication on 30.03.2022 stating that the final restructuring approval would be provided around the month of June, instead of proceeding to formalise this implied acceptance of the restructuring proposal, the Appellant had requested the Corporate Debtor a day earlier on 29.04.2022 to provide documents in support of their restructuring proposal for being placed before the

Debenture Holders for their consideration. The Corporate Debtor after registering their initial protests on 19.05.2022 by stating that they had already submitted all the requisite information and documents earlier, agreed to provide these documents to the Appellant on 24.05.2022. Before the restructuring proposal could be considered by the Debenture holders, the Appellant issued a statutory Demand Notice under Section 138 of the Negotiable Instruments Act, 1881 on 31.05.2022. Thereafter, on 10.06.2022 the Appellant informed the Corporate Debtor that the majority of the Debenture Holders had rejected the restructuring proposal. Thereafter, on 27.06.2022, the account of the Corporate Debtor was declared as NPA. The onslaught continued with DRT proceedings also being initiated against the Corporate Debtor.

33. From the above chronology of events, it is clear that the Corporate Debtor was suddenly besieged by a fast-paced flurry of coercive steps taken by the Appellant which were geared towards recovery of debt inspite of the Corporate Debtor having already paid Rs 152 Cr. under the Sapphire transaction to the Appellant on the underlying previous understanding that grant of moratorium for 18 months was subject to compliance in concluding the Sapphire transaction. The Corporate Debtor had held their end of the bargain by carrying out the Sapphire transaction within the time-line which was fixed for 25.03.2022. The conclusion of the Sapphire transaction was also communicated to ECLF. The Appellant on the instructions of ECLF also acted upon the terms of the restructuring proposal by releasing the charge on property and Rs 9.33 Cr. This was clearly a sign to the Corporate Debtor that the restructuring and moratorium proposal stood confirmed by the Appellant. However, we find that the Appellant

after taking the benefit of Rs 152 Cr. out of the Sapphire transaction suddenly turned volte face and took several coercive steps which were not envisaged in the restructuring and moratorium proposal.

34. The timing of these coercive steps interestingly coincide immediately after having induced and ensnared the Corporate Debtor into completing the Sapphire transaction on 25.03.2022. The timing and speed of these coercive steps is also unusual. It is the contention of the Corporate Debtor that the Appellant not only reneged on their commitment to extend the moratorium but took measures that financially squeezed the Corporate Debtor into a tight spot. By declaring them as NPA, the prospects of the Corporate Debtor availing of finance from other parties was also severely curtailed. The intent behind these moves were to put the Corporate Debtor into an irretrievable position making it almost impossible to recover from the burden of default. Clearly the Corporate Debtor was not running away from its obligations to repay but had only sought reprieve by way of moratorium. We are inclined to infer from the surrounding circumstances that the Corporate Debtor had entered into the Sapphire transaction with the legitimate expectation that the moratorium and release of properties would be acted upon by the Appellant and the Debenture Holders. We also find that the Appellant was aware of the intent of the majority debenture holders of agreeing to the restructuring and moratorium proposal and accordingly also acted on their directions like release of charge on Bandra property, release of Rs 9.33 Cr. etc. towards extending moratorium until September 2023. The pattern of conduct prior to the Section 7 petition shows that both Appellant and the

majority debenture holders were working on a common understanding that the restructuring proposal was a done deal.

35. In such circumstances, there seems to be no rational basis for explaining as to how and why the restructuring proposal was suddenly turned down by 97% vote share. Even if for argument's sake, it is agreed that the other sister concerns of Edelweiss did not support the restructuring proposal, it fails to explain what prompted ECLF to turn volte face and backtrack from restructuring proposal while it was all along sending instructions to the Appellant to act on the restructuring proposal and moratorium.

36. Given this backdrop, there seems to be substance in the contention of the Corporate Debtor that the Appellant along with the Debenture holders had engineered the default thereby acting in a malafide manner causing grave prejudice to the interests of the Corporate Debtor. The Appellant as Debenture Trustee instead of acting with fairness in protecting the interests of the Corporate Debtor by their conduct seem to have acted in unison with the majority Debenture Holders in catalysing their dubious designs to drag the Corporate Debtor towards insolvency. The intent of the Appellant behind orchestrating the default was to push the Corporate Debtor into insolvency despite having substantial and valuable assets. We are convinced for the reasons stated above that there was sufficient proof to substantiate that the Appellant was trying to take undue advantage of the situation to bring the Corporate Debtor under the rigours of CIRP which manifest their ulterior and pernicious motive. We strongly deprecate such motivated and manipulative endeavours on the part of any Financial Creditor to push a Corporate Debtor into the folds of CIRP as it

tantamount to misuse and abuse the provisions of IBC. We do not find any fault in the impugned order wherein the Adjudicating Authority has concluded that the intent behind filing the Section 7 application was something other than the resolution of the Corporate Debtor. To answer the second question, we are of the considered view that the Adjudicating Authority having gone through the documents placed before it and after hearing rival contentions of both the parties, has duly applied its mind based on the totality of circumstances demonstrated before it, in returning the findings that the intent behind initiating the CIRP proceedings in the present facts of the case was something other than insolvency resolution.

37. For the foregoing reasons, we do not find any cogent reasons warranting interference in the impugned order. The Appeal lacks merit and stands dismissed. All IAs stand disposed of. No cost.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**Place: New Delhi
Date: 16.04.2025**

Abdul