Alps Industries Limited

REGD. / CORP. OFFICE
Plot No 15-B, G. T. Road
Chaudhary Morh, Ghaziabad
Uttar Pradesh – 201001

September 16, 2024

To,
Listing Compliances (LISCO)
The National Stock Exchange of India Ltd
Scrip Code-ALPSINDUS

K.A.:- Ms. Bhavika Kanodia

Subject: Reply on information sought vide e-mail dated September 16, 2024 for Copy of Order regarding admission of company under CIRP

Dear Sir,

This has reference to the information sought vide e-mail dated September 16, 2024 for Order Copy regarding admission of company under CIRP

We wish to bring in your kind knowledge that we had disclosed the event of admission of company under CIRP vide announcement dated September 14, 2024. Now as desired vide e-mail dated September 16, 2024 the Copy of order dated September 13, 2024 by Hon'ble National Company Law Tribunal (NCLT), Allahabad Bench regarding admission of company under CIRP is enclosed as annexure.

We hope, you will find the same in order for taking on record. Please let us know if any more information required.

Yours Faithfully

For ALPS INDUSTRIES LIMITED

Ajay Gupta
Digitally signed by Ajay Gupta
Date: 2024.09.16 11:05:42 +05'30'

ALPS INDUSTRIES LTD GHAZIABAD

(Ajay Gupta)
Company Secretary & Asstt.
Vice President- Legal.
M.No.-+91-9871692058
Email id:ajaygupta@alpsindustries.com

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP(IB) No. 46/ALD/2024

Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED

(Acting in its capacity as trustee of EARC Trust - SC 30)
Having its Registered office at
Edelweiss House, Off CST Road, Kalina, Mumbai - 400 098

.... Financial Creditor/Applicant

Versus

M/S ALPS INDUSTRIES LIMITED

Having Its Registered Office at, Plot No.15-B, G.T. Road,
Chaudhary Morh, Ghaziabad, Ghaziabad,
Uttar Pradesh- 201001

.... Corporate Debtor/Respondent

Order pronounced on-13th September, 2024

Coram:

Mr. Praveen Gupta	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

Appearances:

Sh. Yash Tandon, Adv.	:	*For the Financial Creditor*
Shri Shashvat Gupta, Adv.	:	*For the Corporate Debtor*

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ORDER

1. This Application has been filed on 04.06.2024 by the Edelweiss Assets Reconstruction Company Limited (acting in its capacity as trustee of EARC Trust- 30) (hereinafter referred as the "**Applicant/Financial Creditor"**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "***IBC***") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against M/s Alps Industries Limited (hereinafter referred as "***Respondent/Corporate Debtor***) in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. 31,39,72,61,640 (as on 27.02.2024) in default, declaring date of default being 30.03.2009.

2. The Financial Creditor is engaged in the business of acquiring and resolving non-performing assets and/or other loans in defaults from banks and financial institutions (including other asset reconstruction companies) under Section 5 of SARFAESI Act. Applicant acts as a Trustee of a securitization trust which acquires the non-performing assets in accordance with the SARFAESI Act and the extant guidelines

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of the RBI in this respect. As per Section 5 and 7 of SARFAESI Act and master circulars issued by RBI, a Trust is not prohibited under the law from assigning its rights, title and interest in the loans to any other entity or trust. Therefore, the Application is also acting in its capacity as a trustee of EARC-SC-30 TRUST under section 7 of IBC.

3. The Financial Creditor/Applicant has taken over the Debt of the Corporate Debtor from several Banks and is an Assignee of the followings banks :

i. State Bank of Mysore (SBM), Principal Lender and has taken over the debt of Corporate Debtor from the State Bank of Mysore (Assignor Bank) alongwith all underlying securities, rights, claims, benefits etc. vide a Deed of Assignment dated 29.03.2014. State Bank of Mysore has now merged with State Bank of India

ii. The Applicant has also taken over the Debt of Corporate Debtor from State Bank of Patiala vide Assignment Deed Dated 27-6-2014. The Applicant has also taken over the Debt of Corporate Debtor from UCO Bank vide Assignment Deed Dated 18-3-2015.

iii. The Applicant has also taken over the Debt of Corporate Debtor from State Bank of Hyderabad vide Assignment Deed Dated 26-9-2014 which is now merged with State Bank of India.

iv. The Applicant has also taken over the Debt of Corporate Debtor from State Bank of Patiala vide Assignment Deed Dated 27-6-2014.

v. Financial Creditor entered into an Assignment agreement dated 14-3-2014. The Applicant has also taken over the Debt of Corporate Debtor from Export-Import Bank of India (EXIM) vide Assignment Deed Dated 2-1-2014.

vi. The Applicant has also taken over the Debt of Corporate Debtor from Punjab National Bank (PNB) vide Assignment Deed Dated 30-12-2016.

vii. The Applicant has also taken over the Debt of Corporate Debtor from State Bank of Bikaner and Jaipur vide Assignment Deed Dated 27-6-2014 which is now merged with State Bank of India.

viii. It may be pointed out that the Assignor Banks were the consortium members in the Master Restructuring Agreements dated 3-9-2011.

4. It is stated in the application that loan account of the Corporate Debtor was declared NPA after 31.03.2016 by the Assignor Banks. The details of classification of Accounts as NPA are given below:-

S. No.	**Cut-off Date**	**Trust Details**	**Date of NPA**	**Total outstanding as per Assignment Agreement (in cr.)**
1.	14.11.2013	EARC Trust SC 23 (EXIM)	31.03.2011	12.48
2.	28.02.2014	EARC Trust SC 30 (SBI)	31.03.2009	664.54
3.	28.03.2014	EARC Trust SC 38 (SBM)	31.03.2013	186.93
4.	31.03.2014	EARC Trust SC 44(SBBJ)	22.01.2013	51.02
5.	12.06.2014	EARC Trust SC 42 (SBOP)	22.01.2013	152.62

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6.	25.09.2014	EARC Trust SC 106 (SBH)	31.10.2011	128.35
7.	28.02.2015	EARC Trust SC 119 (UCO)	01.09.2011	26.85
8.	09.12.2016	EARC Trust SC 236 (PNB)	31.03.2016	195.47
Total				**1418.26**

5. The details of various credit facilities availed by the Corporate Debtor from Assignor Banks namely EXIM Bank, SBI, State Bank of Mysore (now SBI), State Bank of Patiala (now SBI), State Bank of Bikaner and Jaipur (now SBI), State Bank of Hyderabad (now SBI), UCO Bank and Punjab National Bank, are provided in Part-IV of the Application.

6. With respect to the Assignor Bank SBI, it sanctioned various financial facilities to the Corporate Debtor, constituting a total sum of Rs. 420,00,00,000 (Rupees Four Twenty Crores Only,), details of which are stated below:-

S No.	Nature of Facility	Amount Sanctioned
1.	Cash Credit	Rs. 216,00,00,000/- (Rupees Two Hundred and Sixteen Crores Only)
2.	Term Loan	Rs. 204,00,00,000 (Rupees Two Hundred an Four Crores Only)

7. For this purpose, an Agreement of loan for overall limit was executed on 28.03.2000 by the parties for a sum of Rs. 24

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crores. The said loan amount was sanctioned on 28.03.2000. The details of said facilities are stated below: -

Type of Facility	**Limit**
Fund Based	Rs. 21 Cr.
Letter of Credit	Rs. 2.50 Cr.
Bank Guarantee	Rs. 0.50 Cr.
Total	**Rs. 24 Cr.**

Copy of said loan agreement dated 28.03.2000 and sanction letter have been annexed as **Annexure No. 5 and 6** respectively with the Application.

8. Agreement of pledge of Goods and Assets was executed on 28.03.2000 along with Agreement of Hypothecation of Goods and Assets. After this, an Agreement of Hypothecation of Goods and Assets was also executed on 28-3-2000 along with the personal guarantee given by the Directors. Supporting documents are enclosed with the Application

9. As stated in the application that the said Loan was duly secured by creating charge duly registered as per section 125 of the Companies Act 1956 and in support the Registration of Charge certificate dated 28-3-2000 by ROC Kanpur has been annexed as **Annexure No. 10** with the Application.

10. The Corporate Debtor again requested the Assignor Bank SBI for sanction of FBP/FBD (under L/C) Limit of Rs 1 crore. The

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said proposal was accepted and sanctioned vide sanction letter dated 1-6-2000. Copy of the Sanction letter dated 1-6-2000 by SBI has been annexed as **Annexure No. 11** with the Application.

11. For availing the aforesaid enhanced limit, the Corporate Debtor executed the following documents: -

i. Copy of the Supplemental Agreement of Loan for increase in overall limit dated 2-6-2000 with SBI has been annexed as Annexure No. 12

ii. Copy of the Supplemental Agreement of Hypothecation of Goods and assets for increase in the overall limit dated 2-6-2000 with SBI has been annexed as Annexure No. 13

iii. Copy of the Supplemental Agreement of Pledge of Goods and assets for increase in the overall limit dated 2-6-2000 with SBI has been annexed as Annexure No. 14

iv. Copy of the Supplemental Deed of Guarantee for increase in overall limit dated 2-6-2000 with SBI has been annexed as Annexure No. 15

v. Copy of the letter issued by IDBI to the Managing Director of Corporate Debtor regarding the Mortgage by Deposits of title deeds by way of constructive delivery at the office of IDBI on 13-9-2000 in respect of creation of second charge on the immovable properties together with buildings, Plant and Machinery thereon in favour of SBI has been annexed as Annexure No. 16

12. The Corporate Debtor approached Assignor Bank EXIM Bank for term loan of Rs 5 Crore. The said proposal was approved and sanctioned via sanction letter dated 24-9-

2001. The amount of loan sanctioned and disbursed was Rs 5 Crore and was to be repaid in 20 quarterly instalments commencing on 20.12.2002.

13. The Loan agreement with Assignor Bank SBI was modified by several Supplementary Agreements of Loan for Increase in Overall Limit. Supplementary Agreements of Loan for Increase in Overall Limit are dated 05.11.2001, 14-10-2003, 29-3-2004 when the Limit was increased to 28 Crore. Along with the said Supplementary Agreements of Loan, Agreements of Hypothecation of Goods and Assets, Agreement of Pledge of Goods and Assets and Deed of Guarantee Personal and Corporate were also executed.

14. The Type of Facility granted through the said Loan Agreements are stated in the table below: -

Type of Facility	**Limit**
Export Packing Credit	Rs. 10 Cr
Cash Creditor (Hyp of Stocks)	Rs. 8 Cr.
Foreign Bill Purchase/Discount (Non L/C)	Rs. 5 Cr.
Letter of Credit	Rs. 2.50 Cr.
Bank Guarantee	Rs. 0.50 Cr.
Total	**Rs 29 cr.**

15. It is also submitted by the Applicant that the Corporate Debtor availed the aforesaid enhanced credit limit as per its

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requirements from time to time and agreed to repay the debt amount availed on demand.

16. In consideration for availing the aforesaid enhanced limit the Corporate Debtor executed the following documents: -

i. Copy of the Supplemental Agreement of Loan of overall limit dated 29-3-2004 with SBI has been annexed as Annexure No. 17.

ii. Copy of the Supplemental Agreement of Hypothecation of Goods and assets for increase in the overall limit dated 29-3-2004 with SBI has been annexed as Annexure No. 18

iii. Copy of the Supplemental Agreement of Pledge of Goods and assets for increase in the overall limit dated 29-3-2004 with SBI has been annexed as Annexure No. 19

iv. Copy of the Supplemental Deed of Guarantee for increase in overall limit dated 29-3-2004 with SBI has been annexed as Annexure No. 20

v. Copy of the letter regarding the grant of individual limit within the overall limit dated 29-3-2004 with SBI has been annexed as Annexure No. 21.

17. A Supplemental Agreement of Loan for Increase in overall Limit was entered into between the Assignor Bank State Bank of India and the Corporate Debtor on 21-12-2004 increasing the aggregate sum limit from 28 Crore to 73.71 Crore. Deeds of Hypothecation and Guarantee were also executed along with.

18. It is also submitted by the Applicant that in consideration for availing the aforesaid enhanced limit, the Corporate Debtor executed the following documents:

i. Copy of the Supplemental Agreement of Loan for increase in overall limit dated 21-12-2004 with SBI has been annexed as Annexure No. 22

ii. Copy of the Supplemental Agreement of Hypothecation of Goods and assets for increase in the overall limit dated 21-12- 2004 with SBI has been annexed as Annexure No. 23

iii. Copy of the Supplemental Deed of Guarantee for increase in overall limit dated 21-12-2004 executed by Mr. Sandeep Agarwal and Mr. K.K. Agarwal with SBI has been annexed as Annexure No. 24

iv. Copy of the Deed of Guarantee for Corporate Guarantee dated 21-12-2004 with SBI has been annexed as Annexure No. 25.

19. The Corporate Debtor vide revival letter dated 08.10.2005 acknowledged its previous liability owed to the Assignor Bank State Bank of India. Copy of revival letter dated 08.10.2005 has been annexed as **Annexure-26** with the Application.

20. To increase the overall limit of loan, Corporate Debtor executed a supplementary agreement of Loan on 08.10.2005 with Assignor BankSBI along with Agreement of Hypothecation of Goods and Assets and Deed of Guarantee

including both Personal and Corporate. The said Supplementary loan agreement dated 08.10.2005 increased the loan amount from Rs. 73.71 crores to Rs. 96.71 crores and it was to be repaid in 20 quarterly instalments commencing from 01.12.2017 to 01.09.2012.

21. Further, the Credit facility was enhanced from Rs. 96.71 crores to Rs. 132.71 crores. The details of which are enumerated below in the table: -

Type of Facility	**Limit**
Export Packing Credit	Rs. 14 Cr.
Cash Credit(Hyp of Stocks)	Rs. 37 Cr
Foreign Bill Purchase/Discount (Non L/C)	Rs. 9 cr.
Term Loan (Under TUF)	Rs. 33.71 Cr
Letter for Spares	Rs. 5 cr.
Letter of Credit	Rs. 9 cr.
Bank Guarantee	Rs. 1 Cr
SLC	Rs. 5 Cr
SLC under Gold Card	Rs. 4 Cr
Total	**Rs. 132.71 Crore**

22. The Corporate Debtor also availed Term Loan and Working Capital Loan of Rs. 2 crore each which was sanctioned vide letter dated 29.03.2006.

23. For further availing Financial Facility, Corporate Debtor approached the Assignor Bank UCO Bank and Financial facility of Rs. 45 cr. was sanctioned vide sanction letter dated 26.12.2006.

24. After this, the Corporate Debtor also approached, Assignor Bank, State Bank of Bikaner and Jaipur for fresh term loan of Rs. 20 cr. and FBWC Limit of Rs. 15 cr. The said request was sanctioned vide letter dated 28.08.2008.

25. For the purpose of acknowledgement of debt, Balance and Security Confirmation letter dated 26.03.2008 was issued by the Corporate Debtor to Punjab National Bank. Copy of the Balance and Security Confirmation letter dated 26.03.2008 has been annexed as **Annexure-46** with the Application.

26. The Corporate Debtor again approached the Assignor Bank State Bank of India for increasing the loan amount. For this purpose, both the parties signed Supplementary Agreement of Loan for increase in the overall limit dated 07.03.2007 by which limit was enhanced from Rs. 132.71 crores to Rs. 212.71 crores. The said loan of Rs. 80 cr. is to be repaid in 33 quarterly installments from 01.12.2008 to 01.12.2016.

27. Again, the Corporate Debtor for increasing the loan amount approached the Assignor Bank SBI and both the parties executed Supplementary Agreement of loan for increasing the overall limit from 212 to 270.71 cr. on 20.11.2007. This limit of loan was further enhanced vide Supplementary

Agreement of loan dated 14.03.2008 from Rs. 270.71 cr. to Rs. 295.71 cr. and further enhanced from 295.71 to Rs. 487.71 vide Supplementary Agreement of loan dated 08.09.2008. as per the terms of repayment of Tenure Loan – III of Rs. 35 crores. was to be repaid in 10 years.

28. The Corporate Debtor again executed an agreement of loan dated 26.9.2009 with the Assignor Bank SBI and credit limit of Rs. 301.50 crores and Rs. 235.68 crores. was granted.

29. Due to non-repayment of loan amount, the matter was referred to Corporate Debt Restructuring Forum which is a non-voluntary mechanism set up by the Reserve Bank of India for restructuring of corporate debt. In pursuance of this, the Corporate Debtor executed Trust and Retention Agreement dated 26.09.2009 with the Lenders. As per the said agreement, the Corporate Debtor opened Trust and Retention Account wherein all the existing balance was transferred and term loan is required to be repaid in 38 quarterly installments commencing from 01.07.2009 to 31.12.2018.

30. After this, the Corporate Debtor again submitted the proposal for restructuring of debt before the Assignor lender

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Banks. Amongst these Assignor Banks, PNB approved the said restructuring proposal of the Corporate Debtor as per CDR package vide letter dated 29.09.2009.

31. For restructuring under CDR mechanism, the Corporate Debtor submitted proposal before the Assignor Bank SBBJ. The said proposal was sanctioned by the Assignor Bank SBBJ vide sanctioned letter dated 27.10.2009. For this purpose, the Corporate Debtor also submitted Balance and Security Confirmation letter dated 31.12.2010. The details of said restructuring loan amount is stated below: -

Cash Credit	Rs. 18 cr.
Term Loan	Rs. 15.92 Cr.
FITL i) On Term Loan ii) On Cash Credit	 Rs. 1.42 cr. Rs. 1.53 Cr.
WCTL	Rs. 3.98 Cr.
Total	**Rs. 47.10 Cr.**

32. After this, the Corporate Debtor and Assignor Banks executed the Master Restructuring Agreement dated 25-11-2009 wherein all the Assignee Banks agreed to abide by the terms and conditions of consortium and abide by all the guidelines regarding data coverage integrity, dissemination, reporting format frequency, etc., which may be issued by the RBI from time to time. Copy of the Master Restructuring

Agreement dated 25-11- 2009 has been annexed as Annexure No. 69 with the Application.

33. For this purpose, the Corporate Debtor executed the following security documents in favour of the Assignor Banks that made a consortium of Banks on 11-05-2010: -

i. Copy of Agreement of Addendum to Joint deed of Hypothecation dated 21-05-2010 has been annexed as Annexure No. 70.

ii. Copy of Joint deed of Hypothecation dated 11-05-2010 has been annexed as Annexure No. 71.

iii. Inter se Agreement executed between the SBI and Consortium members dated 11-05-2010 has been annexed as Annexure No. 72.

iv. Copy of Working Capital Consortium Agreement dated 11-05- 2010 has been annexed as Annexure No. 73.

v. Copy of Addendum Amendment in the inter se agreement dated 11-05-2010 has been annexed as Annexure No.74.

vi. Copy of Deed of Guarantee dated 11-05-2010 has been annexed as Annexure No. 75.

34. The Corporate Debtor again requested the Assignor Bank SBI for sanctioning the credit facilities of Rs. 274.5 crores which was approved and sanctioned by the SBI by executing the following documents: -

i. Copy of the Agreement of Loan dated 24-6-2011 with SBI has been annexed as Annexure No. 76

ii. Copy of the Agreement of Hypothecation of Goods and Assets dated 24-6-2011 with SBI has been annexed as Annexure No. 77

iii. Copy of the letter regarding the grant of individual limits dated 24-6-2011 with SBI has been annexed as Annexure No. 78.

iv. Copy of the Deed of Guarantee dated 24-6-2011 of Sandeep Agarwal and K.K. Agarwal with SBI has been annexed as Annexure No.79.

v. Copy of the Credit Facilities and agreement/documents dated 24-6-2011 with SBI has been annexed as Annexure No. 80.

vi. Copy of the CIBIL Disclosure of Information for guarantee dated 24-6-2011 with SBI has been annexed as Annexure No. 81.

35. The Corporate Debtor again approached the Assignor Bank SBI proposing to sanction credit facilities of Rs. 170.56 crores which was sanctioned by the Bank and acknowledged by the Corporate Debtor by executing the following documents: -

i. Copy of the Agreement of Loan dated 24-6-2011 with SBI has been annexed as Annexure No. 82

ii. Copy of the Agreement of Hypothecation of Goods and Assets dated 24-6-2011 with SBI has been annexed as Annexure No. 83

iii. Copy of the letter regarding the grant of individual limits dated 24-6-2011 with SBI has been annexed as Annexure No. 84.

iv. Copy of the Deed of Guarantee dated 24-6-2011 of Sandeep Agarwal and K.K. Agarwal with SBI has been annexed as Annexure No. 85.

36. The Corporate Debtor approached the Assignor Bank SBI again for increasing the credit facility limit in accordance with the CDR Package authorized for the Corporate Debtor. State Bank of India reviewed the proposal and, as a result, sanctioned the credit facilities under the CDR Package, which were duly received, and recognized by the Corporate Debtor. The SBI increased the credit facilities in terms of CDR Package up to Rs. 936.42 crore. The following documents were executed for this purpose: -

i. Copy of the Agreement of Shipping dated 24-6-2011 has been annexed as Annexure No. 86.

ii. Copy of the Agreement of Negotiations/purchase /discount of Bills Expressed in foreign currencies or Indian Rupees dated 24- 6-2011 has been annexed as Annexure No. 87.

iii. Copy of Undertaking cum indemnity in respect of facsimile instruction dated 24-6-2011 has been annexed as Annexure No. 88.

iv. Copy of the Agreement cum indemnity dated 24-6-2011 has been annexed as Annexure No. 89.

v. Copy of the letter regarding the grant of individual limit dated 24-6-2011 has been annexed as Annexure No. 90.

37. The Corporate Debtor also sought a revised CDR package and renewal of credit facilities from the banks. The Assignor Bank (PNB) reviewed the proposal, and the account was restructured through a sanction letter dated 18.06.2011.

38. The Corporate Debtor executed Balance & Security Confirmation Letters dated 12.05.2012 and 02.04.2013 wherein the debt has been acknowledged as on 31.03.2012. the Copy of the said Letter has been annexed as **Annexure No. 91** with the Application.

39. A Master Restructuring Agreement was entered into between the Corporate Debtor and CDR Members on 3-9-2011, wherein it was agreed that the account of the Corporate Debtor in default, shall be restructured. Copy of the Master Restructuring Agreement dated 3-9-2011 has been annexed as **Annexure No. 92** with the Application.

40. In pursuance of the aforesaid Agreement dated 03.09.2011 the account of the Corporate Debtor was restructured in accordance with the Corporate Debt Restructuring Scheme (CDR), sanctioned by the Applicant vide Letter dated 04.05.2011. As per the Master Restructuring Agreement, the particulars of the existing lenders were noted in Schedule II.

The Terms of repayment were also mentioned in Part B of Schedule III as per which the Term Loan was to be repaid in 32 quarterly instalments starting from 31.03.2011 to 3112.2018 and Part B of Schedule IV as per which the WCTL was to be repaid in 32 quarterly instalments starting from 31-3-2011 to 31-12-2018 and Part B of Schedule V as per which the FITL was to be repaid in 13 quarterly instalments from 31-3-2011 to 31-3-2014. The Restructured Debt profile was also detailed under Schedule XIII as per which the total debt now stood at **Rs 1333.61 Crore**.

41. As security for the proper repayment of the dues of the Assignor Banks, the Corporate Debtor hypothecated and created first charge on its entire current assets including stocks of finished goods, book- debts, fixed assets, receivables, book-debts, etc. with the Assignor Bank.

42. Due to continuous default in the repayment of the financial facilities, the Applicant issued notice dated 23.8.2018 under section 13(2) of the SARFAESI Act to the Corporate Debtor.

43. With regard to the issue of limitation, it has been averred by the Financial Creditor in the application that the Corporate Debtor has acknowledged the debt in the Balance Sheet of

the FY 2019-20, 2020-21, 2021-22 and 2022-23. Along with this, Corporate Debtor has also acknowledged debt vide letter dated 29.4.2019 and vide same email dated the Corporate Debtor has admitted that it has made payment of Rs. 01 crores on 29.4.2019 and Rs. 07 cr. has been transferred till March 2019. The Corporate Debtor also made repayment in June 2019 of Rs. 1.25 cr. This acknowledgement extended the period of limitation till 2022 as per Section 18 of the Limitation Act, 1963.

44. Furthermore, for settling the remaining debt, the last OTS proposal given by the corporate debtor was vide letter dated 09.5.2023. The Details of default amount as on 27.02.2024 EARC Trust SC-30 (Assigned by State Bank of India) is given below in the table: -

S. No.	**Facility**	**Total (in Rs.)**
1.	Cash Credit	15,76,50,24,868
2.	FITL- Funded Interest Term Loan	87,01,53,191
3.	Term Loan	77,21,11,715
4.	Term Loan	1,57,00,36,310
5.	Term Loan	1,64,89,03,736
6.	Term Loan	2,74,22,05,541
7.	Term Loan	2,40,22,05,541
8.	Term Loan	1,26,39,68,020
9.	Term Loan	4,35,65,11,264
TOTAL		**31,39,72,61,640**

REPLY ON BEHALF OF THE CORPORATE DEBTOR

45. In response to the aforesaid application, the Corporate Debtor has filed reply vide dairy no. 1719 dated 02.09.2024 wherein it is contended that Corporate Debtor availed various financial facilities from the lenders/ Banks which are outstanding till date and as a consequence of which, it was referred to Corporate Debt Restructuring Forum.

46. It is submitted by the Corporate Debtor that the Restructuring Debt Scheme (hereinafter referred as "***DRS***") for the Company's entire debts was sanctioned on 31.8.2009 in accordance with the sanction letter dated 11.9.2009, along with the conversion of 20% of the principal Term Loan into 6% OCCPS and Foreign Currency Exchange Loss into 1% OCCPS, and the Master Restructuring Agreement dated 25-11-2009 was executed between the Banks and Corporate Debtor.

47. When the company encountered difficulty in meeting the repayment schedule under CDR restructuring, it petitioned the CDR again and, with the permission of member banks, was sanctioned to rework the restructuring under CDR on 31.3.2011, as per sanction letter dated 4.5.2011.

48. In accordance with this, the Corporate Debtor and CDR Members entered into a Master Restructuring Agreement on 03.09.2011, in which it was agreed that the Corporate Debtor's account, which was in default, would be restructured.

49. After this, when the net worth of the Corporate Debtor started eroding drastically, the Corporate Debtor filed DRS with the BIFR vide application in November 2014. It also filed rehabilitation case with BIFR before the SICA. When SICA got repealed in 01.12.2016, the Corporate Debtor started repayment to its lenders in accordance with the repayment terms of DRS. The Corporate Debtor made repayment of some loan amounts to Financial Creditor till FY 2019-20. As submitted in the Reply, from 2014 to 2019, the Corporate Debtor has made repayment of Rs. 70.75 crores to the Financial Creditor as per the settlement terms stated in DRS. It is also stated by the Corporate Debtor that due to change in economic conditions, the Corporate Debtor suffered huge loss and could not able to meet its liability in full from December 2017 onwards.

50. The Financial Creditor issued notice under section 13(2) of SARFAESI Act on 23.8.2018 to the Corporate Debtor after withdrawing its consent from the DRS vide letter dated 11.12.2017. In response of which, the Corporate Debtor submitted a settlement proposal to the Financial Creditor vide letter dated 10.10.2018 which was rejected by the Financial Creditor vide letter dated 23.10.2018.

51. After this, the Financial Creditor as per the norms of the SARFASEI Act took over the possession of the Secured assets of the Corporate debtor and adjusted its part of dues by Rs. 155.79 Cr. out of total realizations from those assets.

52. It is also stated by the Corporate Debtor that from 2014 to 2022, it paid a total amount of Rs. 226.55 crores (in cash as well as realizations made out of sale proceeds of secured assets) to the Financial Creditor against the original principal amount and also settled the loan & other due accounts of other banks by paying Rs. 48.94 crores with J&K Bank, ICICI Bank, Syndicate Bank, HSBC, IDBI Bank, (through its assignor ARCIL) Standard Chartered bank, DCB Bank & DBS Bank (through its assigner) and RBS (ABN Amro) Bank.

53. Further, it is stated in the reply from para 31A and B the reasons of the Corporate Debtor's failure to meet its repayment obligations mainly due to recession in global economy, change in government policy and economic conditions. All this led to financial sickness and shortage of working capital which eroded the commercial operations of the Corporate Debtor.

54. The Corporate Debtor submitted OTS proposals to the Financial Creditor vide email dated 29.4.2019, 30.4.2019 and 09.05.2023. Copies of OTS proposals has been annexed as Annexure no. CA-3 and CA-4 respectively. In terms of its last proposal dated 09.05.2023, the Corporate Debtor has acknowledged that it is ready to repay the outstanding debts to the Financial Creditor within the span of one (01) year.

55. Furthermore, Corporate Debtor submits that it has made a payment of Rs. 100 Lakhs, Rs.25 Lakhs, Rs. 125 Lakhs, Rs. 125 Lakhs, Rs. 125 Lakhs and Rs. 50 Lakhs as on 29.4.2019, 30.4.2019,30.5.2019, 28.06.2019, 30.7.2019 and 31.8.2019 respectively towards the outstanding debts of the Lenders.

56. Lastly, it is submitted by the Corporate Debtor that it is not an insolvent company but only facing financial crunch due to reasons stated aforesaid.

FINDING AND ORDER

57. We have heard the Ld. Counsel for the Applicant and perused the records, exhibits/annexures and after considering arguments advanced by respective Learned Advocates, the main issues which are before us to be decided in respect of the present Application u/s 7 are:

i. Whether the application is filed within the period of limitation.

ii. Whether there is debt and default within the meaning of the I &B Code, 2016.

58. With regard to the first issue of filing of this Application within limitation period is concerned, it is stated that the Corporate Debtor has availed the Financial Facilities in the form of loans from the Assignor Banks, which was later assigned to the present Financial Creditor. The loans availed by the Corporate Debtor through various financial and credit facilities has been in default since 30.03.2009 as per Part-IV of the Application. The same has not been disputed by the Corporate Debtor.

59. During the course of hearing, the Ld. Counsel representing the Corporate Debtor has acknowledged the failure in repayment of the financial credit facilities availed from the Assignor banks. The same is also evident from the reply filed by the Corporate Debtor. The relevant paras confirming the failure in repayment of the Financial facilities are reproduced below: -

"…

> *17. That it may be submitted that during the pendency of the sanction of DRS, the Company continued to pay the lenders of DRS (including EARC) as per the repayment proposed in DRS. However even after abatement of case of the company upon repeal of SICA on 1.12.2016, the Company continued to pay to EARC up to FY 2019-2020.*
>
> *18. That on 22.8.2018, during a meeting with company, EARC agreed to a proposal of settlement of its dues including settlement of its Cumulative Redeemable Preference Shares. However, the Company started the repayment w.e.f. 1st Sep 2018 as per the orally agreed settlement proposal dt. 22.8.2018.*
>
> *19. That during the period between 2014 to 2019, company has paid a total sum of Rs. 70.75 Cr. to EARC as per settlement under DRS or otherwise.*

…

> *21. That on insistence of EARC, including the Petitioner, the Company started making payment*

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w.e.f. November 2014 to EARC as per the terms of the aforesaid consented DRS. However, due to unprecedented adverse circumstances and continued cash losses, the Company was not able to continue making payment to EARC and meet its repayment obligation thereof in full from December, 2017 onwards.

22. That During FY 2017-18, the Company's turnover was around Rs. 363 Cr. and EBITDA was a negative of Rs. 25.77 Cr. as against the annual turnover of approximately Rs. 800 Cr. with EBITDA of approx. Rs. 40 Cr. during the year 2013-14.

…

28. the EARC issued a notice U/s 13(2) dated 23.8.2018 to Company. The same was replied by the Company and it submitted a written proposal of settlement of its dues with EARC vide letter dated 10.10.2018 which was rejected by the EARC vide letter dated 23.10.2018 without any rhyme and reasons. The Copy of written proposal for OTS dt 10.10.2018 and rejection letter dated 23.10.2018 are being collectively filed here with and marked as Annexure CA-2.

29. That during the period from 2019 to 2022, EARC has taken over the possession and also sold the secured assets of the company in public auctions under the provisions of SARFAESI and adjusted its part of dues by Rs. 155.79 Cr. out of total realizations made therefrom.

30. That the Corporate Debtor during the period from 2014 to 2022 paid in total Rs. 226.55 Cr. (in cash as well as realizations made out of sale proceeds of secured assets) to Edelweiss Assets Reconstruction Company Limited against the original principal amount and also settled the loan & other due accounts of other banks by paying Rs. 48.94 Cr.

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with J&K Bank, ICICI Bank, Syndicate Bank, HSBC, IDBI Bank (through its assignor ARCIL) Standard Chartered bank, DCB Bank & DBS Bank (through its assigner) and RBS (ABN Amro) Bank.

…

33. That it is also a matter of record that due to adverse external factors being faced by the Company, which were beyond its control, it could not generate cash flows to meet the contracted payment and repayment obligations of EARC. At all stages, EARC had been kept fully and completely informed of the situation and conditions on the side of the Company and the same are all well within the knowledge of EARC.

34. That the Corporate Debtor had submitted various OTS proposals to the Petitioner. Payment advices towards OTS proposal vide emails dated 29-4-2019 and 30-4-2019 are being filed herewith and marked as Annexure No. CA-3.

35. That it may be stated that the Corporate Debtor has submitted proposal for settlement of its dues from time to time and lastly on 9.5.2023. Copy of the OTS dated 9-5-2023 is being filed herewith and marked as Annexure No. CA-4.

36. That it may be submitted that the Company/Corporate Debtor has made a payment of Rs 100 lakh, 25 lakh, 125 lakh, 125 lakh, 125 lakh and Rs. 50 lakh.as on 29.4.2019, 30.4.2019, 30.5.2019, 28.6.2019, 30.72019 & 31.8.2019 respectively which was the last payment made towards the outstanding debt of the Petitioner.

37. That the Company Acknowledges debt of EARC and ready to pay as per last proposal dt 9.5.2023 of and seeks time of one year to be able to repay the same

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to the Petitioner and prays for the indulgence of this Hon'ble Tribunal.

…"

60. After going through the various submissions made by the parties, a clarity has come that Article 137 of the Limitation Act, 1963 defining a period of 3 years will be computed after considering Section 18 or 19 of the Limitation Act, 1963 with a fresh period of limitation in spite of the default dates being 30.03.2009 as mentioned in Part IV of the Application**.** The relevant section 18 of the Limitation act, 1963 for the purpose of the calculating period of limitation in the instant case is reproduced below: -

"Section 18 – Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,
(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and
(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

61. It is relevant to mention here that the total amount of default as stated in Part-IV of the application is Rs. 31,39,72,61,640/- The date of default is 30.03.2009 and such default is continuous. The Record of default submitted by the Applicant filed before the NeSL states the date of default as 31.03.2009. Within the span of three years Corporate Debtor executed MRA dated 25.11.2009 with all the Assignor Banks and also signed balance and security confirmation letter dated 31.12.2010 in favour of SBBJ regarding the debt owed by him. Such initiative forms the part of Corporate Debt Restructuring Forum wherein the Corporate Debtor was referred by the lead bank namely, SBI. After a while on 24.06.2011, the Corporate Debtor also

signed another Agreement of loan for enhancing the overall financial limit with SBI.

62. Further, it is also important to note here that the Corporate Debtor continued to pay a sum of Rs. 226.75 cr from the period 2014 to 2019. Meanwhile, the Applicant issued notice under section 13(2) of the SARFAESI Act 2002 on 23.8.2018 to the Corporate Debtor. The Corporate Debtor has also given various OTS proposals and acknowledged its debt vide letters dated 10.10.2018 and 29.4.2019. The last OTS Proposal was given by the Corporate Debtor was vide letter dated 09.05.2023 which further enhanced the period of limitation. The outstanding debt has also been acknowledged by the Corporate debtor in its Balance Sheet of the FY 2019-20, 2020-2021, 2021-22 and 2022-23. Such acknowledgement also extended the period of limitation till 09.05.2026 and this application was filed before this tribunal on 04.06.2024 which is well within the period of limitation as per Section 18 of the Limitation Act, 1963.

63. As regards the second issue of whether there is a debt and default or not, the Ld. Counsel representing the Corporate Debtor during the course of hearing on 03.9.2024 has

admitted the fact that there has been breach of terms and conditions of loan agreements signed by the corporate debtor with the Assignor Banks. The Corporate Debtor has acknowledged the debt outstanding vide letters dated 10.10.2018, 29.04.2019 and 09.05.2023. From 2014 to 2022, the Respondent made repayments totaling Rs. 226.55 crore, which included cash payments as well as amount recovered from selling the secured assets of the Corporate Debtor. Despite giving the various OTS Proposals and restructuring of the debt, the debt is still outstanding which establishes that Corporate Debtor failed to repay its debt. Thus, the Applicant / Financial Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor. Hence, as per Section 7(5) of IBC, 2016, the present application is required to be admitted and Corporate Insolvency Resolution Process (CIRP) is required to be initiated against the Corporate Debtor i.e M/s Alps Industries Limited.

64. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and default, which is more than the threshold limit of Rs. 1 crore

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applicable at present. The application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

65. The Financial Creditor has proposed the name of IRP in Part-III of the Application, the Financial Creditor has proposed the name of Mr. Hemant Sharma as Interim Resolution Professional. His Registration Number is IBBI/IPA-002/1P-NO0015/2016-2017/10019, R/o C-10, Lower Ground Floor, Lajpat Nagar-III, New Delhi-110024, Email: hemant78sharma@yahoo.com. He has duly given the consent in Form No. 2 dated 29.04.2024 annexed as **Annexure A-4** with the Application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Hemant Sharma, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 06

December 2024. After considering these details, we appoint Mr. Hemant Sharma having registration No. IBBI/IPA-002/1P-NO0015/2016-2017/10019, as Interim Resolution Professional (IRP).

66. In the given facts and circumstances of the case as per our above findings, the present application u/s 7 being complete in all respect and having established the default in payment of the Financial Debt for the default amount being above the threshold limit and an IRP also having been appointed as per above para 32, the application is admitted in terms of Section 7(5) of the I & B Code, 2016 against the Corporate Debtor and accordingly, moratorium is declared in terms of Section 14 of the Code.

67. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

68. The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act.

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In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic

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records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empaneled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

69. The IRP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/ institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR

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proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP to enable him to conduct the CIR Proceedings as per law.

70. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.

71. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

(f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be."

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72. We direct the Financial Creditor to deposit a sum of Rs. 3,00,000 with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

73. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

74. List the matter on 15.10.2024 for filing of the progress report/further proceeding.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date : 13th September, 2024