IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

IB-1035(PB)/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

ECLEAR LEASING & FINANCE PRIVATE LIMITED
211, New Delhi House, 27, Barakhamba Road,
New Delhi-110001

.... Financial Creditor/Petitioner

Vs.

SWATI HEALTH & EDUCATION SERVICES PRIVATE LIMITED
D-14, 2nd Floor, Preet Vihar,
Delhi-110092

.... Corporate Debtor

Order delivered on: 04.03.2022

Coram:

JUSTICE RAMALINGAM SUDHAKAR,
HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA,
HON'BLE MEMBER (TECHNICAL)

Appearance:

For the FC: Mr. Rishi Kumar Singhal, Advocate.
For the CD: Mr. Rahul Kochar, Advocate.

Aks

ORDER

1. This is an application, filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Process (IRP), against the Corporate Debtor viz., M/s. Swati Health & Education Services Private Limited (Corporate Debtor), for default in repayment of Rs. 6,18,29,477 (Rupees Six Crore Eighteen Lakh Twenty Nine Thousand Four Hundred Seventy Seven Only) including interest.

2. It is averred that the Corporate Debtor had approached the Director of the financial Creditor for seeking loan facility to meet its urgent business financial commitments and on request, the Petitioner i.e., M/s. Eclear Leasing & Finance Private Limited gave an unsecured demand loan on 07.12.2016 of Rs. 5,50,00,000 (Rupees Five Crore Fifty Lakhs only) to the Corporate Debtor for a period of 18 months, with interest payable quarterly @12% P.A. The Memorandum of Understanding (MoU) dated 07.12.2016, delineating the terms and conditions, was executed between the Petitioner and the Corporate Debtor. An addendum to the MoU dated 06.07.2018, was executed to extend the tenure of the loan by another 18 months.

3. It is stated that the Corporate Debtor made payments towards interest from 17.07.2017 to 03.02.2018. The Corporate Debtor defaulted in payment of interest from 01.04.2018 to 31.03.2019 therefore, Corporate Debtor's account was declared as Non-performing Asset (NPA) in the books of the Petitioner on 31.03.2019. The Corporate Debtor has confirmed the receipt of loan as well as due amount by issuing confirmation of accounts statements on 01.04.2018, 01.04.2019 (Annexure A-7), for the Financial Year 2016-17, 2017-18 and 2018-19. The amount received by the Corporate Debtor is reflected in its Financial Statements for the year ending 31.3.2017, 31.3.2018, 31.3.2019. The Petitioner sent a Recall notice dated 19.03.2020, to the Corporate Debtor to repay the debt alongwith interest.

4. The Corporate Debtor has filed its reply dated 21.12.2020 to the application and has stated that the MoU dated 07.12.2016 and the addendum to the MoU dated 06.07.2018, are forged, fabricated documents. Further, Mr. Sanjiv Gupta, Director of the Corporate Debtor, was never authorized through a board Resolution, to sign the said MoU and the Addendum to the MoU. The day to day operations of the Corporate Debtor were not looked into by Mr. Sanjiv Gupta, as he is merely a sleeping director since the incorporation of the Corporate Director. The Petitioner has taken the benefit out of the dispute between the Directors of the Corporate Debtor to obtain the documents which are part of the Application. The fact that Mr. Sanjiv Gupta was being duly authorized or not to sign the MoU, cannot be decided in the present proceedings. The Petitioner has relied on the letter

dated 02.07.2018, however, the same is signed on the plain paper and not on the letter head of the Corporate Debtor, therefore, there is no proof of receipt of the same.

5. It is stated that the application is time barred as per the Limitation Act 1963, as the MoU is of the year 2016 and the present application is filed in November 2020, thus liable to be dismissed on this ground. The claim made by the Petitioner is highly exaggerated and is not even remotely close to the true facts and figured.

6. The Petitioner has filed rejoinder dated 11.02.2021 and has denied that the Petitioner had taken the benefit out of the dispute between the Directors of the Corporate Debtor and obtained document in collusion with Mr. Sanjiv Gupta. It is stated that as a Director Mr. Sanjiv Gupta is fully competent to sign the document on behalf of the Corporate Debtor as he is not a sleeping Director of the Corporate Debtor and had signed all the documents at time of availing the financial facility. It is further stated that the Corporate Debtor had issued cheque No. 000013 for Rs. 5,50,00,000 (Rupees Five Crore Fifty Lakhs only) in the name of Petitioner which was signed by two directors of the Corporate Debtor namely. Mr. Sorav Gupta and Mr. Sanjiv Gupta.

7. The only plea taken by the Corporate Debtor in the reply is that Mr. Sanjeev Gupta is not authorized to negotiate with the Petitioner for the purpose of borrowing the loan. Such argument

seems to be a fallacy and a very false plea because the list of Board of Directors in its Board report Annexure A-10 shows, Mr. Sanjiv Gupta is one of the Directors and the Balance Sheet also records the receipt of the principal amount from the Petitioner. Therefore, such a plea raised by the Corporate Debtor/Respondent has no legal basis.

8. It is submitted and tenable to hold that the date of default is 31.03.2019 and the application is filed on 31.10.2020, which is well within the period of limitation and not barred by law.

9. The registered office of corporate debtor is situated in Delhi and therefore, this Tribunal has jurisdiction to entertain and try this application.

10. The application is complete which is filed in the proforma prescribed under Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the IBC. From the narration as above, we are satisfied that a default has occurred, and the debt has remained unpaid. Thus, the application warrants admission as it is complete in all aspects and is admitted, initiating CIRP as prescribed under the IBC.

11. The Petitioner has proposed the name of Insolvency Resolution Professional, Mr. Pawan Kumar Goyal, having registration No.: IBBI/IPA-001/IP-P00875/2017-18/11473 and email: ca.pawangoyal@gmail.com. A written communication in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application

to Adjudicating Authority) Rules, 2016, has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against her in the Insolvency and Bankruptcy Board of India or ICAI. In addition, further necessary disclosures have been made by Mr. Pawan Kumar Goyal, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code. Hence, we appoint Mr. Pawan Kumar Goyal, the IRP of the Corporate Debtor.

12. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of IBC. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

13. As a consequence of the application being admitted in terms of Section 7 of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) of IBC shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the IBC. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the IBC shall come in force.

14. We direct the Petitioner to deposit a sum of Rs. 2,00,000, with the Interim Resolution Professional Mr. Pawan Kumar Goyal,

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 needful shall be done within three days from the date of receipt of this order by the Petitioner. The amount however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Petitioner.

15. The registry is directed to communicate a copy of the Order to the Petitioner, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi, at the earliest, but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

-Sd-

RAMALINGAM SUDHAKAR
PRESIDENT

-Sd-

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)