IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

C.P. (IB) No. 912/MB/2022

Under Section 7 of the IBC, 2016

In the matter of

HDFC BANK LIMITED

[CIN: L65920MH1994PLC080618]

…Financial Creditor

v/s.

Euro life Healthcare Private Limited

…Corporate Debtor

Order Delivered on: 09.05.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:	Mr. Saurabh Nikalje i/b Vidhii partners, Ld. Counsel.
For the Respondent:	Mr. Aman kacheria a/w Ms. Tanishka Desai i/b Vashi and Vashi, Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application being C.P. (IB) No. 912/MB/2022 filed on29.05.2022 by HDFC Bank, the Financial Creditor/Applicant, under Section 7 of Insolvency

& Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Eurolife Healthcare Private Limited.

2. The Applicant Financial Creditor has claimed that the Corporate Debtor is in default of a sum of Rs. 45,11,74,829/- (Rupees Forty-Five Crores, Eleven Lacs, Seventy-Four Thousand, Eight Hundred & Twenty-Nine only) {comprised of Principal Outstanding of Rs. 41,41,87,907/-, Interest to be claimed amounting to Rs. 75,32,748.97/- as on 1.7.2022. The date of default is stated in Part IV of the application as 01.07.2021.

3. It is the case of the Financial Creditor that –

3.1. The Corporate Debtor approached the Applicant bank for seeking financial assistance by way of Cash Credit Facility amounting to Rs. 250,000,000/- (Rupees Two Hundred and Fifty Million only) and Term Loan facility of an amount of Rs 240,000,000/- (Rupees Two Hundred and Forty Million only) for the purpose of meeting its working capital requirements and for purchase of machinery.

3.2. The Applicant issued Sanction Letter dated 19th May 2017 bearing reference no. CAM010205170027 for an aggregate limit of Rs. 490,000,000/- (Rupees Four Hundred and Ninety Million only) with sub-limits and on terms and conditions more particularly stipulated therein. The aforesaid sanction letter was duly accepted by the Corporate Debtor.

3.3. After disbursement of the credit facilities, the Corporate Debtor requested the Applicant to substitute the mortgaged property mentioned in Sanction letter dated 19th May 2017 as the title of that property was not perfect and clear Memorandum of Equitable Mortgage by Deposit of

Title Deeds and Declaration-cum-Undertaking were executed by Corporate Debtor, both dated 1st November 2017, in favour of the Financial Creditor.

3.4. Corporate Debtor requested the Financial Creditor to grant additional Working Capital Term Loan in view of "Guaranteed Emergency Credit Line" scheme notified by the Government of India ("GECL"); the Corporate Debtor stated that it was eligible to avail the scheme. Acceding to the Corporate Debtor's request, the Financial Creditor sanctioned GECL Facility to the tune of Rs. 75,000,000/- (Rupees Seventy-Five Million only) on the terms and conditions more particularly set out in in the sanction letter dated 23rd December 2020 bearing Reference No. CAM011112200032, with the aforesaid terms and conditions being in addition to and in conjunction with the Sanction Letter dated 19th May 2017. Sanction Letter dated 23rd December 2020 was duly accepted by the Corporate Debtor.

3.5. Owing to default in repayment of the credit facilities on part of the Corporate Debtor, its account was classified as an NPA on 28th September 2021.

3.6. The Financial Creditor, through its Advocates issued recall letter/notice bearing Reference No. VP/7995/2720/2021 and recalled the credit facilities and invoked the guarantees given by Defendant Nos. 1 to 4 in favour of the Applicant. The Defendants were called upon to pay a sum Rs. 42,23,89,782.03/- (Rupees Forty-Two Crore Twenty-Three Lakh Eighty-Nine Thousand Seven Hundred Eighty- Two and Three Paise Only) being the total amount due as on 30th November 2021 along with further interest thereon @ 9.70% p.a. and penal interest @ 18 % p.a. from

01st December 2021 till the date of actual payment, within 7 days from the date of receipt of this notice failing which the Applicant would proceed against the Defendants for recovery of the Applicant's outstanding dues.

4. The corporate debtor filed an affidavit in reply dated 06.02.2023 stating that it has been in settlement talks with the Financial creditor since November 2022, and has, over the course of these settlement, communicated various one-time settlement proposals to the financial creditor; in furtherance of these talks, on 26 December 2022, the financial creditor addressed to the respondent a notice confirming the principal and interest purportedly due and payable by the respondent.

4.1. It is further submitted that it is engaged in the manufacture and distribution of active pharmaceutical products, healthcare formulations, intravenous infusions, ophthalmic, sterilized water for injections etc. since the past 15 years, and caters to healthcare-related requirements globally; and it has several manufacturing plants that it operates around India. In aid to repay their outstanding dues, the Respondent has made considerable efforts to identify prospective buyers for their manufacturing plants. As part of this process, and to demonstrate their bona fide approach to repaying their outstanding dues, the Respondent has introduced these prospective buyers to the Financial Creditor directly, such that the Financial Creditor may satisfy themselves as to the genuineness of the Respondent's proposal. The Corporate debtor has placed a copy of such proposal and a copy of the correspondence exchanged between the Respondent and the Financial Creditor in this regard. By email dated February 3, 2023, the Financial Creditor requested the Respondent to revise their settlement proposal. In furtherance thereto, by email dated February 6, 2023, the Respondent has sought for some additional time to dispose their assets in discharge of their outstanding payments. To conclude the settlement of outstanding dues, the Corporate Debtor has already expressed their intention to, and has begun taking steps to sell and dispose of their production plant at Alathur. The Corporate Debtor verily believes that the successful sale of the said Alathur plant will entirely satisfy the Financial Creditor's principal dues.

4.2. It is also stated that the Corporate Debtor is a solvent company; its estimated projected revenue for the Financial Year 2022-2023 is approximately Rs. 30,00,00,000/- (Rupees Thirty Crores Only) and in the Financial Year 2019-2020 it was over Rs. 150,00,00,000/- (Rupees One Hundred Fifty Crores Only); the book value of the assets of the Corporate Debtor, as on date, is above Rs. 100,00,00,000/- (Rupees One Hundred Crores Only), as can be seen from the filings with the Ministry of Corporate Affairs. Loss accrued to the Corporate Debtor only due to and during the period of the Covid-19 pandemic; the Corporate Debtor has in fact settled with various creditors who had filed their respective applications before this Hon'ble Tribunal, and is in settlement talks with a few other creditors, and in two cases, CIRP initiated in the matter of the Corporate debtor came to be withdrawn immediately thereafter on settlement of dues of creditors. In view of this, the Corporate Debtor pleads that the Corporate Debtor has demonstrated that it is a solvent company, capable of settling its creditor's claims, including the Financial Creditor abovenamed, and in terms of the decision set out by the Hon'ble Supreme Court in the matter of Vidarbha Industries Power Limited vs. Axis Bank Limited [(2022) 8 SCC 352] ("Vidarbha"), this Hon'ble

Tribunal is entitled to exercise its discretion in admitting a Petition filed under Section 7 of the Code.

5. This Bench heard both the Counsel(s) and has carefully gone through the documents and pleadings available on record.

5.1. It is not in dispute that the Corporate Debtor owes to the Financial Creditor and is in default; the Corporate debtor was a profit making company prior to COVID-19 pandemic; and it has positive net-worth as per financial statements for the year ended on 31.03.2022. It is also in dispute that the Corporate Debtor owes Financial debt to the Financial Creditor and such debt is in default. It is also not in dispute that it has contemplated disposal of one of its manufacturing facilities at Alathur and forwarded a proposal received from interest buyer to the financial creditor vide e-mail dated 05.11.2022, which was instantly rejected by the financial creditor vide its mail dated 08.11.2022 asking the corporate debtor to improve the offer of Rs. 33.00 crores as Bank would not settle for less than principal outstanding of Rs. 41.42 crores approx. The said email also stated that "*the bank shall continue its legal action for recovery of its dues*". Thereafter, the Corporate Debtor offered to pay whole of principal amount of Rs. 41.42 crores vide its letter dated 28.12.2022 in tranches i.e. Rs. 5.00 crores on or before 30.1.2023 and balance in 2-3 instalment on or before 31.3.2023; and asked the financial creditor to grant approval to this proposal. However, the financial creditor against rejected the offer for payment of principal amount also vide mail dated 4.1.2023. On 7.1.2023, the Financial Creditor again persuaded the Corporate Debtor to increase the offer substantially as increase of Rs. 12,000/- in offer thereafter is also not acceptable. Vide email dated 11.1.2023, the financial creditor asked the corporate debtor to arrange a meeting with prospective buyer. It is seen from the emails placed before this Bench that the Corporate Debtor had finally written to the Financial Creditor vide e-mail dated 03.02.2023 to settle the amount at Rs. 41.45 crores and also requested it to seek adjournment in view of this proposition.

5.2. From the above communications, this Bench notices that the corporate debtor has been engaging the financial creditor into settlement talks; it is on path of recovery after COVID-19 onslaught; and the financial creditor looks more concerned with the recovery of its dues rather the resolution of defaults of the corporate debtor as emerges from the email dated 08.11.2022 stating that "*the bank shall continue its legal action for recovery of its dues*".

5.3. This bench finds that, there has been negotiations between the parties as to the quantum of money to be paid against complete liquidation of the debt owed to the Financial Creditor; and the corporate Debtor has found a willing buyer of one of its manufacturing facilities. However, this bench also finds that there have been numerous applications seeking CIRP in case of Corporate Debtor have been filed under the code, some of which came to be withdrawn upon settlement at different stages, and one application from a Operational Creditor is pending before this bench apart from the present application. Though, this bench is conscious of the fact that the Corporate Debtor is a positive net worth company engaged in manufacture of pharmaceutical products, the series of defaults indicates the liquidity crunch at the end of Corporate Debtor, necessitating resolution of its defaults at one go.

5.4. This bench notices that, in the matter of the Hon'ble Supreme Court in **'Vidarbha Industries Power Limited' Vs. 'Axis Bank Limited', 2022**

SCC OnLine SC 841, it was held that "*the viability and overall financial health of the Corporate Debtor are not extraneous matters, and the expression 'may admit' confers discretion to admit".* However, for the reasons stated at para 5.3 above. this bench is not inclined to exercise its discretion in the present case.

6. In view of the foregoing, this Bench is of considered view that this Petition deserves to be admitted under the Code.

ORDER

7. The petition bearing CP (IB) No. 912/MB-IV/2021 filed by HDFC Bank ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Euro life Healthcare Private Limited ("the Corporate Debtor"), is **admiited.**

a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

(v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) The bench hereby appoints Mr. Rajeev Mannadiar, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00212/2017-18/10412 and email: rajeev@integroip.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
09.05.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)