NATIONAL COMPANY LAW TRIBUNAL, COURT-V, NEW DELHI

IB-**3095**/ND/2019

In the matter of:

Axis Bank Financial Creditor (FC)

Vs.

Eurotas Infrastructures Limited Corporate Debtor

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

Judgment delivered on: ***24.11.2020***

Coram:

ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
K.K. VOHRA, MEMBER (TECHNICAL)

Present:
For the applicant : Advs. Aditya, Ms. Aditi, Mr. Siddhant
For the respondent: Adv. Alok Dhir

ORDER

Per: K.K. Vohra, Member (T)

1. Axis Bank (FC) has filed the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (the Rules) with a prayer to trigger Corporate Insolvency Resolution Process (CIRP) in respect of respondent Company, Eurotas Infrastructures Ltd, referred to as the Corporate Debtor (CD). Hon'ble NCLAT vide order dated 08.10.2020 in CA (AT) (Ins) No. 852 of 2020 passed a direction to hear the present matter on 21.10.2020 and make efforts to dispose of the same within 4 weeks. The matter was again listed on 3.11.2020 and reserved for orders.

2. FC is a company incorporated on 03.12.1993 and carrying on business under Banking Regulation Act, 1948 having its Registered Office at Trishul, 3rd Floor, Opposite Samarthaeshawar Temple, Law Garden Ellis Bridge, Ahmadabad-380006. CD (CIN No. U701 01DL 2011 PLC 214733) against whom initiation of CIRP has been prayed for, was incorporated on 23.02.2011 having its registered office at 90/A-207, Khasra No. 412 GF, Mahipalpur Extension, New Delhi - 110037, within the territorial jurisdiction of this Bench. The CD is involved in real estate activities with own or leased property.

3. It is the case of the FC that a Term Loan (TL) of Rs. 290 crore (cr) was sanctioned to CD on 01.11.2012. Thereafter, a facility agreement dated 22.11.2012 (Page 56 of Petition) was executed between the parties. On 24.12.13, a Novation cum Transfer agreement was signed (Page 349, Vol II of Petition) whereby this TL of Rs 290 cr was partly transferred to some other banks (Canara Bank, Vijaya Bank and SBI), keeping the TL of Rs 83 cr with the Petitioner [Pg 368 of Petition]. The Novation cum Transfer agreement was duly signed by borrower (CD) and the agreement had usual clause for interest rate (Pg 359). The CD acknowledged its debt to the tune of Rs. 266,19,97,428 as on 30.11.15 to all lenders vide revival letter dated 29.12.2015 (Pg 130 of Petition). The parties amended the loan sanctioned to CD vide another novation agreement dated 29.12.2015 (Pg 119 of Petition) and added a clear repayment schedule beginning March 2017 (Pg 123). On 23.09.16 (Pg 140 onwards), another loan (named as 'Cost Overrun I') of Rs 41.06 cr was sanctioned by Petitioner and other banks where Petitioner took a share of Rs 11.75 cr (Account 2). Pursuant to a utilization request, an amount of Rs. 79,58,40,172 as Term Loan (Account 1) was disbursed from 26.11.2012 to 20.03.2017 (Page 116-18 of Petition) by FC.

4. The CD also issued letter dated 08.10.2018 to FC and other lenders and acknowledged its debt due and payable under Section 18 of the Indian Limitation Act 1963 (Pg 161 of Petition). On 24.07.2017, the account of CD was declared as Non Performing Asset (NPA) by the FC. The FC issued notice dated 11.03.2019 (Pg 164 of Petition) recalling the entire outstanding of credit facilities of Rs. 97,74, 84,879 (after giving credit for all payments made by CD) and further interest after 01.04.18, within 7 days from the date of

notice and despite notice the CD failed to repay its liability. As per petition, Rs 118,65,40,276 is still pending to be paid by the CD as on 15.10.19 (Pg 24 of the Petition).

5. The CD filed its counter affidavit and raised following objections (Pg 13 onwards of counter affidavit) against the admission of the present application:
   - The FC declared NPA without following the guidelines issued by Reserve bank of India (RBI) in this regard. The CD has also argued that the date of default is in February 2016 and hence the application is barred by limitation also.
   - It is alleged that the statement of accounts placed by the FC is false and fabricated and is not supported by Certificate under Banker's Books Evidence Act.
   - Form 1 filed under Section 7 is not complete and is defective. The FC failed to file the record of default with Information Utility.
   - The CD has also raised objection against the interest rate charged by the FC on the loan amount.
6. Heard the parties and perused the case records.
7. In order to prove the liability of CD, the FC has filed duly signed and stamped bank account statements pertaining to loan accounts of CD from 23.11.2012 to 22.10.2019 (Account 1) and from 30.09.2016 to 22.10.2019 (Account 2) by way of additional affidavit dated 29.01.2020 and copies of relevant sanction letters, loan agreements and other loan related documents.
8. The FC has filed documents of securities in favour of FC and Bank account statements of loan accounts of CD. The FC, inert-alia, has annexed to the application detailed particulars of 'financial debt' including documents, records and evidence of default as required under sub-section 3 (a) of Section 7 of the Code. In respect of objection raise by CD for record with Information Utility (IU), the FC has filed additional affidavit of record of default with IU (Report as on 31.12.19 at page 8 of additional affidavit of FC) which shows the date of default as 24.07.2017 (page 9 of additional affidavit of FC) and the amount as Rs. 76.78 crore; this Report is deemed to be authenticated.
9. In terms of the Sub-section (3) (b) of Section 7 of the Code, the FC has proposed the name of Mr. Ram Singh Setia for appointment as Interim Resolution Professional (IRP).

The Mr. Setia has agreed to accept the appointment as the IRP and has signed a communication in Form 2 (Pg 41 of Petition).

10. As far as the contention of CD that high interest rates has been charged, Section 7 application filed under the Code cannot be rejected on the ground that the claim has been disputed. Adjudicating Authority needs to ascertain the existence of a debt and default. Further, CD had signed documents which included payment of interest. It is also alleged that the account of the CD has been wrongly declared as NPA. However, IU has clearly declared the debt as default, which is deemed to have been authenticated by CD.

11. In respect of allegation regarding statement of accounts filed by the FC, it is well settled that certified copy of statement of account submitted by FC pertaining to various loan facilities, kept during the course of banking business, basing on which the claim has been raised, can be termed as sufficient evidence of the financial debt. It is pertinent to mention here that the certificate under Section 2 of the Banker's Book Evidence Act has been attached with the application at page 345 Vol-II.

12. As far as the objection raised by CD about limitation is concerned, it is seen that the loan accounts of CD were declared NPA on 24.07.2017. Further, the loan agreements were executed on 22.11.12, 24.12.13 and 29.12.15 (Para 3 above), duly signed by CD. The CD also issued letter dated 08.10.2018 (Para 4 above) to FC and other lenders and acknowledged its debt due and payable under Section 18 of the The Limitation Act 1963 (LA), the acknowledgment was made by CD before expiry of the limitation period under Article 137 of LA. That apart, the present application is filed on 21.10.19 by FC within three years from the date of declaring accounts of CD as NPA and from the date of acknowledgement letter dated 08.10.2018. Therefore, in terms of the provisions of Section 238A read with relevant provisions of LA, since the application was filed within three years from the date of default (as per record before IU), we are of considered view that the application is not barred by limitation.

13. We find that in order to trigger CIRP under Section 7 (5) of the Code, the Adjudicating Authority is required to satisfy the following conditions:

"(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application"

If it is established that default has occurred and no disciplinary proceeding is pending against the IRP and application is complete, then Adjudicating Authority has no option but to admit the application; if any of the condition is lacking, the application is liable to be rejected.

14. From the facts, it is seen that the applicant falls within the definition of Financial Creditor. The material placed on record further confirms that FC had disbursed various loan facilities to the CD which were acknowledged by CD and the CD committed default in repayment of the outstanding financial debt. The FC has placed on record acknowledgment of debt by CD.

15. We are satisfied that the present application is complete in all respects and the FC is entitled to claim outstanding financial debts from the CD and that there has been default in payment of the financial debt. Consent of the IRP is enclosed with Petition. The defaulted amount is more than Rs. 1,00,000, being the minimum threshold limit fixed by the Code. Under such circumstances, this Adjudicating Authority is inclined to admit this petition and initiate CIRP against the respondent. Accordingly, **this petition is admitted**.

16. Mr. Ram Singh Setia is hereby appointed as IRP having registration number IBBI/IPA-001/IP-01189/2018-19/11935 with email id: setia.ram@edelweissfin.com.

17. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the IRP immediately (within 3 days) with regard to admission of this application under Section 7 of the Code.

18. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD 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 CD."

19. The supply of the essential goods or services to the CD as may be specified, are not to be terminated or suspended or interrupted during the moratorium period [Sec 14(2) of the Code]. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government in consultation with any financial regulator. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the CD in terms of Section 14 (3) (b) of the Code.

20. The IRP shall perform all his functions contemplated, inter-alia, by Sections 17, 18 and 21 of the Code and conduct proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations and shall file reports before Adjudicating Authority. It is further made clear that all the personnel connected with the CD, its promoters or any other persons associated with the Management of the CD are under legal obligation as per Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day to day affairs of the CD. The IRP shall be under duty to protect and preserve the value of the property of the CD as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

21. The FC is directed to deposit a fee of Rs. 2 lakh to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by IRP and shall be reimbursed by the Committee of Creditors (CoC) to the FC to be recovered as CIRP cost.
22. The office is directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, New Delhi at the earliest possible but not later than seven days from today.

Sd/-
(K. K. VOHRA)
MEMBER (T)

Sd/-
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

BM