

3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 17.10.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No. 133/7/HDB/2019
NAME OF THE COMPANY	Lanco Hoskote Highway Ltd
NAME OF THE PETITIONER(S)	Edelweiss Asset Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Lanco Hoskote Highway Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
U/SN Raju Praveen Kumar Jain Sharma	Advocate	Praveen@jainsharma.com	9951609064

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Sri Vaisakhi M for Vikram	Adv		Vaisakhi

ORDER

Orders pronounced vide separate orders. CP admitted.


Member (T)

Syamala


Member (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No. 133/7/HDB/2019

U/s 7 of IBC, 2016
R/w Rule 4 of I & B (AAA) Rules, 2016

In the matter of:

Edelweiss Asset Reconstruction Company Limited
Acting in its capacity as Trustee for EARC Trust – SC
217 having its office at Edelweiss House, Offi. CST Road
Kalina, Mumbai – 400 098, represented by its authorised
signatory, Ms. Aayushi Chaudhary.

...Petitioner/
Financial Creditor

VERSUS

M/s Lanco Hoskote Highway Limited
a company incorporated under the provisions of
Companies Act, 1956, and having its registered office
at Plot No.4, Software Units Layout, Hitec City
Madhapur, Hyderabad- 500034.

Respondent/
Corporate Debtor

Date of order: 17.10.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / counsels present:

For the Petitioner : Shri VVSN Raju, Advocate.

For the Respondent: Shri P. Vikram, Advocate

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 06.03.19, 29.03.19, 26.04.19, 03.06.19, 26.06.19,
22.07.19, 14.08.19, 30.08.19, 13.09.19, 19.09.19,
26.09.19 and 03.10.19.

NRW



ORDER

1. The Present Petition is filed by M/s Edelweiss Asset Reconstruction Company Limited, which is the Financial Creditor stating that M/s Lanco Hoskote Highway Limited, the Corporate Debtor defaulted in paying an amount of Rs.188,16,05,665/- (Rupees one hundred eighty eight crores sixteen lakhs five thousand six hundred sixty five only) as on 15.12.2018. Hence this petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking commencement of Corporate Insolvency Resolution Proceedings (CIRP) against the Corporate Debtor.
2. The averments of the petition filed by the Petitioner/Financial Creditor in brief are:
 - (i) The corporate debtor was granted, inter alia, various financial assistances under diverse loan and security agreements entered into and executed between the corporate debtor and ICICI Bank Limited. The corporate debtor had defaulted in payment of interest and the principal instalments of the said advances and had failed and neglected to clear the overdue amounts under the loans. Recall notice dated 19.09.2017 was issued by the financial creditor calling upon the corporate debtor to repay the outstanding dues. The underlying security interest, all rights, titles and interests were assigned by the Bank under Section 5 of SARFAESI Act, 2002 in favour of Edelweiss Asset Reconstruction Company Limited in its capacity as Trustee for EARC Trust-SC 217 vide registered Assignment Agreement dated

ans



29.06.2016 registered at the office of Joint Sub-Registrar at Rangareddy vide document No. 482/2016.

- (ii) The Financial Creditor further initiated action under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before Debt Recovery Tribunal, Delhi vide OA No. 460/2018 dated 19.03.2018 which is pending adjudication.
- (iii) The corporate debtor defaulted in making payment to the tune of Rs. 188,16,05,665/- to the financial Creditor as on 15.12.2018.
- (iv) Several documents are filed by the Financial Creditor along with the application containing sanction letters and deed of hypothecation. The corporate debtor has duly acknowledged the debt owed by it to the financial creditor. The corporate debtor has confirmed that it had approached the Assignor Lender for a loan of Rs.125,00,00,000/-.

3. The respondent/corporate debtor filed reply. The objections raised in the counter in brief are as under:-

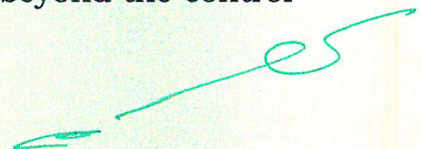
- (i) The respondent/ corporate debtor entered into Concession Agreement dated 09.07.2007 with NHAI, an agency of Govt of India for strengthening and maintaining the existing carriage way at Mulbagal – Hoskote – Bangalore (Section) of NH 75 in the State of Karnataka and widening to 4/ 6 lanes and maintenance thereof. The respondent/ corporate debtor was given right to levy and collect fee from vehicles using the said highway.





- (ii) The obligations of the respondent/ corporate debtor and NHAI under the concession agreement were reciprocal in nature. Certain obligations were to be performed by NHAI in a time frame to enable the respondent/ corporate debtor to commence and complete the work within time.
- (iii) It is averred that it was the obligation of NHAI to hand over the entire site free from all encumbrances to the respondent/ corporate debtor within 12 months from the concession agreement. Upon such hand over the respondent/ corporate debtor was to have the entire project site to its exclusive use. Subject to handing over of the complete site free from encumbrance, the respondent/ corporate debtor was to complete the construction of the project within 30 months from the appointed date. However, NHAI had handed over various parcels of project site in piecemeal over a period of four years from the agreement date. The respondent/ corporate debtor has accordingly calculated the weighted average delay for handing over of site to be 274 days.
- (iv) It is submitted by the respondent/ corporate debtor that the delay caused in progress of work was due to the reasons in appointment of Independent Consultant, delay due to non-indication of any forest land and Yellamallappa lake area in alignment project of highway in the drawings, delay in utility shifting, delay in obtaining General Arrangement Drawings, delay in progress of work due to adverse weather conditions, delay due to court orders, etc. all of which were totally beyond the control

NUW



of the respondent/ corporate debtor. Such a delay was not occasioned by the default of the respondent/ corporate debtor and the same was calculated to be 842 days. The total delay in progress of work is worked out to be 1116 days.

(v) The respondent/ corporate debtor stated that the said delay of 1116 days is attributable to breach of various terms of Concession Agreement, which had resulted into heavy losses to the respondent/ corporate debtor whereunder the cost of project increased to Rs.1109.05 crores from Rs.736.38 crores, which resulted in cost overrun of Rs.372.67 crores.

(vi) It is submitted by the respondent/ corporate debtor that the original project cost of Rs.736.38 crores was funded in the debt equity and grant ratio of 2:1:1. The entire cost of Rs.372.67 crores also was to be funded in the debt equity ratio of 1:1. To avoid further delay, the entire cost of overrun of Rs.372.67 crores was funded by the promoters of the company. After completion of the project, the respondent/ corporate debtor approached the project lenders and other bankers also for funding the amount of cost of overrun of Rs.372.67 crores.

(vii) It is submitted that the respondent/ corporate debtor approached ICICI Bank for finance part of the promoter additional funding towards overrun cost and the Bank agreed to extend Rs.125 crores against total of Rs.372.67 crores, knowing that the execution got delayed and revenue is much lower than the estimated revenue.

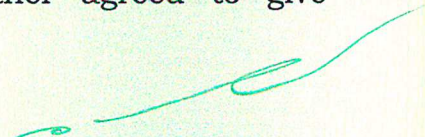
over

- (viii) It is case of respondent/ corporate debtor that it could not achieve the Project Completion and Commercial Operation Date (COD) due to aforesaid failures of NHAI. The respondent/ corporate debtor attributed severe cost escalation in construction of highway project due such failures of NHAI.
 - (ix) It is submitted by the respondent/ corporate debtor that it has given an illustration in its reply showing the estimated revenue by way of toll collection and the actual revenue over a period between financial years 2010-11 to 2018-19 and has worked out drop in revenue to be 58%.
4. Rejoinder is filed by the petitioner/ financial creditor, reiterating the averments made in the Petition and denied all the submissions made by the respondent/ corporate debtor in the counter. The petitioner has alleged that after assignment of debt to EARC the petitioner has not received any amount from the respondent/ corporate debtor. It is submitted by the petitioner that failure to repay the amounts due and payable to the financial creditor is not saved by force majeure and the events were not beyond the control of the respondent/ corporate debtor.
5. We have heard the Counsel for Financial Creditor and the counsel for the corporate debtor. This is a Petition filed on behalf of Financial Creditor under Section 7 of the IBC, 2016 stating that the Corporate Debtor had defaulted in making payment to the tune of Rs.188,16,05,665/- as on 15.12.2018.

nmw

6. The Corporate Debtor availed loans originally from M/s ICICI Bank which was later assigned to Edelweiss Asset Reconstruction Company Limited, the Financial Creditor herein. The Financial Creditor / Petitioner herein has to establish that there is a Financial Debt and Corporate Debtor committed default. The Financial Creditor has filed documents in support of its claim that ICICI Bank initially disbursed various types of loan to the Corporate Debtor, which was later assigned to the Petitioner/Financial Creditor herein. The Financial Creditor filed Form-1 with details and also documents.
7. We have gone through the reply filed on behalf of Corporate Debtor. The Learned Counsel for Corporate Debtor would contend that it entered into Concession Agreement with NHAI and there was a delay in completion of project by 1116 days due to breach of various terms of the Concession Agreement that resulted into heavy losses to the Corporate Debtor where under the cost of project increased to Rs.1109.05 crores from Rs. 736.38 crores which resulted in cost overrun of Rs.373.67 crores.
8. The Financial Creditor relied on para 13 of the Counter filed by Corporate Debtor wherein it is stated that the Corporate Debtor approached M/s ICICI bank for Finance of part of the promoter additional funding towards cost overrun and Bank agreed to fund to the extent of Rs.125 crores against total Rs. 372.67 crores. The Learned Counsel for Corporate Debtor further would contend that the Project Lenders were apprised about the ICIC Loan and also requested them to allow payment of month interest to Financial Creditor from the revenue proceeds of the Corporate Debtor through Escrow Account maintained with Project Lenders but they neither agreed to give

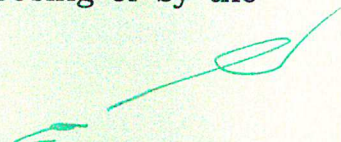




proportionate debt for the cost overrun nor agreed to pay monthly interest to the Financial Creditor. This clearly proves there is a debt due to the Financial creditor.

9. There is no dispute that Financial Creditor /ICICI Bank sanctioned loans to the Corporate Debtor which was later assigned to the Petitioner herein. We have gone through the documents filed on behalf of Financial Creditor. We are of the view that Financial Creditor has established through various documents about sanctioning of various types of loans to the Corporate Debtor from time to time and that Corporate Debtor committed default.
10. The grounds stated by Corporate Debtor will not prevent the Financial Creditor to initiate CIRP against Corporate Debtor. As already stated, the Corporate Debtor is not disputing sanction of various types of loan to it by the Financial Creditor from time to time to the tune of Rs. 188,16,05,665/-. There are grounds to admit the Petition. No tenable objections are raised by the Corporate Debtor. The Financial Creditor suggested the name of the IRP and filed his consent in Form-2. The petition is complete and therefore deserves to be admitted.
9. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-
 - (a) The Bench hereby prohibits 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; Transferring , encumbering, alienating or disposing of by the

NRW




Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;


- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from 17.10.2019 till the 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 Corporate Debtor under Section 33, whichever is earlier.
- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) That this Bench hereby appoints Shri Raghu Babu Gunturu, #R/o T403B, Technopolis, Chikoti Gardens, Begumpet, Hyderabad-500016, IBBI Registration No. IBBI/IPA-002/IP-N00025/2016-17/10053 as Interim Resolution

nmw

Professional to carry the functions as mentioned
under the Insolvency & Bankruptcy Code.

(g) Accordingly, this Petition is admitted.


17.10.19
NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)


17.10.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

*Karim/
Binnu*