

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-05
IB-3095/ND/2019
IA/2582/2023

IN THE MATTER OF:

Axis Bank Ltd.

....Applicant

Vs.

Eurotas Infrastructure Pvt. Ltd.

.....Respondent

SECTION

U/s 7 IBC CIRP

Order delivered on 12.09.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA/2582/2023 in IB-3095/ND/2019 is **allowed**.

Sd/-
(RAHUL BHATNAGAR)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

I.A. 2582/2023

IN

Company Petition No. (IB) – 3095/ND/2019

*Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016
for initiating liquidation process of Corporate Debtor and to pass
other necessary directions.*

In the matter of:

Axis Bank

.... Financial Creditors

VERSUS

Eurotas Infrastructure Limited

.... Corporate Debtor

And in the matter of

Mr. Ram Singh Setia
Resolution Professional of Eurotas Infrastructure Limited
Having Office at
Basement, A- 103, Road No. 4,
Mahipalpur Extension,
New Delhi- 110037

...Applicant

Order Delivered On: 12.09.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant: Aayush Agarwala, Ms. Vishrutyi Sahni, Advocate

ORDER

PER: SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

1. This is an application filed by the Resolution Professional, Mr. Ram Singh Setia, under Section 33(2) read with Section 34 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("Liquidation Regulations"), for issuance of directions for liquidation of Corporate Debtor, Eurotas Infrastructure Limited.
2. The facts in brief stated in the application is as under: -
 - a) The applicant submits that this Adjudicating Authority vide its order dated 24.11.2020 had initiated Corporate Insolvency Resolution Process against Eurotas Infrastructure Limited ('Corporate Debtor') in C.P.(IB)3095/ND/2019, being an application filed under Section 7 of the Code by Axis Bank ('Financial Creditor') and appointed Mr. Ram Singh Setia as the Interim Resolution Professional of the Corporate Debtor who was later confirmed as the Resolution Professional of the corporate debtor.
 - b) The applicant submits the Applicant collated the claims which were submitted by the various creditors of the Corporate Debtor and constituted the CoC of the Corporate Debtor by December 17, 2020 and as on April 27, 2021, a total claim of Rs. 501,82,94,879 has been verified and admitted by the Applicant. Further, on the constitution of the CoC of the Corporate Debtor, the Applicant has convened 18 meetings of the CoC of the Corporate Debtor, for a successful resolution of the Corporate Debtor in accordance with the Code.
 - c) On February 13, 2021, the Applicant published the Invitation for Expression of Interest ("EOI") as per Form G under Regulation 36 of the CIRP Regulation. Under the EOI, the last date for submission of an EOI was March 2, 2021 and the last

date for issuance of the Information Memorandum was March 14, 2021.

- d) The applicant submits that in the Fourth Meeting of the CoC convened on March 8, 2021, the Applicant informed the CoC that pursuant to the Invitation for the EOI, two EOI have been received by the Applicant. However, considering the number of EOI and the requests for extension of time for submission of EOI received from two bidders, the CoC resolved to re-publish the Form G under Regulation 36 of the CIRP Regulations. Further, in this meeting, even the fees of the Forensic/Transaction Auditor were discussed. Accordingly, on March 15, 2021, the Applicant issued another Form G under Regulation 36 of the CIRP Regulation, wherein the last date for submission of EOI was extended up to March 31, 2021 and the last date for issuance of IM was extended up to April 12, 2021.
- e) Subsequently, the Applicant received 4 EOI's from the PRAs. In the Fifth Meeting of the CoC, convened on April 5, 2021, the Applicant informed the CoC about the PRAs. Thereafter, the Sixth Meeting of the CoC was convened on April 8, 2021, on which date the CoC and the Applicant discussed and finalized the Request for Resolution Plan ("RFRP") for the Corporate Debtor. Thereafter, the List of the PRAs was finalized on April 17, 2021. The Applicant also informed the PRAs to submit their resolution plans for the Corporate Debtor by May 12, 2021.
- f) Then as submitted by applicant, several requests made by the various PRAs, the CoC in its Seventh Meeting held on May 10, 2021, unanimously voted in favour of seeking an extension of 90 days under Section 12(2) of the Code. Accordingly, on May 21, 2021 the applicant filed first extension application seeking exclusion of 35 days due to lockdown and extension of 90 days for completion of CIR Proceedings. This Adjudicating Authority granted an extension of 90 days (after exclusion of 35 days) commencing from June 28, 2021, until September 25, 2021.
- g) Further, it is submitted that in pursuance to its 9th CoC meeting, the Applicant issued a FORM G dated July 17, 2021. Under the FORM G, the last date for submission of EOI was set out as August 1, 2021, and the last date for submission of the resolution plan was set-out as September 7, 2021. Thereafter, on July 19, 2021, the Tenth Meeting of the CoC was convened by the Applicant

and it was also resolved to appoint GT Restructuring Services LLP ("GTRS"), an IBBI registered Insolvency Professional Entity, as process advisory for the CIRP of CD for purpose of Value Maximization.

- h) That applicant submitted that in the Twelfth Meeting of the CoC, convened on September 13, 2021, the Applicant informed the CoC that two Resolution Applicants, namely, Dickey Alternative Investment Trust ("DAIT") and Ashtech India Limited ("Ashtech"), ("Resolution Applicants") had submitted their resolution plans in September 2021. Post preliminary discussions, the CoC decided to grant an opportunity to DAIT and Ashtech to revise their resolution plans with improvement in value. The same was communicated by the Applicant to the Resolution Applicants.
- i) Thereafter, the Thirteenth Meeting of the CoC was convened by the Applicant on September 17, 2021. In this meeting, the Applicant informed that no revised resolution plan was submitted by the Resolution Applicants and therefore the resolution plan submitted by them earlier would have to be reviewed by the Applicant before placing them before the CoC for consideration.
- j) On October 6, 2021, the Applicant convened the Fourteenth Meeting of the CoC. In this meeting, the Applicant supported by the GTRS presented a comparative analysis of the two resolutions plans received. The Applicant also apprised the CoC that certain deficiencies are observed in the resolution plan as regards the mandatory requirements of the plans as per the provisions of the Code and that the PRAs were willing to cure the plans and provide additional details and documents in due course, to make the plan compliant with the Code. In view of the above, the Applicant suggested that while the required due diligence is being carried out under Section 29A of the Code, the discussions / negotiations for improvement in the value of resolution plans can be held with the PRAs so that they can submit the revised plans which are also compliant with the Code, which may be put to vote. Accordingly, the Applicant presented the various quotation received from the three vendors for conducting due diligence as per Section 29-A of the Code. Based on the quotation, the Applicant proposed to appoint BDO India LLP and requested the CoC to approve a total cost plus out of pocket

expenses and applicable taxes which would form part of the insolvency resolution process cost of the Corporate Debtor. The CoC inter alia resolved to approve the fee for appointment of BDO India LLP for conducting due diligence under Section 29-A of the Code. BDO India LLP was appointed by the Applicant for conducting the due diligence under Section 29-A of the Code.

- k) Thereafter on November 2, 2021, the Applicant convened the Fifteenth Meeting of the CoC wherein the observations of legal counsels on resolution plans were shared with CoC. The observation requiring compliance by the Resolution Applicants were communicated to the respective Resolution Applicants to cure / revise the resolution plans. The Resolution Applicants confirmed their willingness to cure / revise the resolution plans. The Applicant further informed the Resolution Applicants that BDO India LLP has been appointed to conduct due diligence from the angle of section 29-A of the Code. They have conducted the necessary due diligence and submitted their interim report. It was further communicated that as per the interim reports, there are no red flags. Further, the CoC discussed in detail issues pertaining to feasibility, viability, and the process for monitoring the operations during the period of deferred payment of resolution plan amount. The CoC proposed certain provisions regarding monitoring and securing the deferred dues and requested PRAs to substantially improve the amount of their resolution plans. The PRAs agreed to examine the suggestions of the CoC and revert with their revised plans. Due to the short time left for the completion of CIRP, the PRAs were requested to expedite the submission of the revised plan. However, the PRAs mentioned that due to their travel and / or leave of staff on account of the festive season of Diwali, they would require additional time until November 10, 2021, to submit revised plans.
- l) Thereafter, on November 16, 2021, the Applicant convened the Sixteenth CoC meeting. In this meeting, the Applicant apprised the CoC that after the fifteenth CoC meeting, the Applicant has received an interest from M/s Kesoram Industries Ltd, vide their email dated November 9, 2021, to participate in the CIRP of the Corporate Debtor. Further, an EOI was received from Areion Asset Management Pvt. Ltd to participate in the CIRP of the Corporate Debtor. Accordingly, the

Applicant updated the CoC on the various provisions of the CIRP Regulations wherein the CoC cannot consider resolution plans or EOIs which are received after the time specified under Regulation 36B of the CIRP Regulations has elapsed or which is received from a person not present in the final list of PRAs. The CoC deliberated on the issue and decided to reject the EoI from both the parties and advised the Applicant to communicate its decision to them. The Applicant further informed the CoC that pursuant to discussions with the Resolution Applicants in the CoC meeting held on November 2, 2021, the revised and modified resolution plans were to be submitted by November 10, 2021. In anticipation of the submission of plans by them, the CoC meeting was scheduled for November 12, 2021. However, no plan was received from them, within the timeline as promised. In the interest of all the stakeholders and in line with the primary objectives of Code, for the revival of Corporate Debtor, another opportunity was provided to the Resolution Applicants to submit a resolution plan with a substantial increase in value, as desired by the CoC, the timeline for submission of plans was extended to November 13, 2021, by 1200 hrs and the CoC meeting was postponed to November 15, 2021.

m) However, no resolution plan was received within the extended timeline. In fact, on November 15, 2021, an email was received from Ashtech seeking certain clarifications and also seeking additional time up to November 16, 2021, to submit a signed resolution plan. DAIT also submitted the password-protected resolution plan after the expiry of the timeline at 1212 hrs on November 15, 2021. While the Sixteenth CoC meeting was ongoing, Ashtech also submitted their resolution plan. After detailed deliberations, it was decided by the CoC to condone the delay in submission of plans and open the plans by obtaining the password from the PRAs. The representatives of the PRAs attended the meeting one by one, shared the passwords and the plans were opened in their presence, advising them about the decision of the CoC to condone the delay and seeking their confirmation that it is their final plan. It was decided to schedule the meeting of the CoC on November 17, 2021 to consider resolution plans and in the meantime the Applicant to check the compliance of plans with regard to the provisions of the

Code.

- n) Thereafter, the CoC further deliberated on the timeline for putting the compliant plan(s) to vote. The Applicant apprised the CoC of the fact that the extended CIRP period is up to November 24, 2021, within which the voting, issuance of LOI, obtaining and accepting performance bank guarantee has to be completed. Therefore, the voting result would have to be made available by November 20, 2021, in case the plans are found to be compliant and put to vote in the meeting proposed to be held on November 17, 2021. At this stage, certain members of the CoC mentioned that it may not be possible for them to vote in such a short time and they may need a minimum period of 12-15 days to evaluate the plans and obtain authorization from the competent authority. In this regard, the Applicant informed the CoC that considering the CIRP timeline, the voting would have to be completed no later than November 20, 2021. However, the Applicant undertook to evaluate the possibility of seeking an extension for the purpose of completing the voting in the event the plans are found to be compliant and are put to vote.
- o) On November 17, 2021, the Applicant convened the Seventeenth CoC meeting. In this meeting after a detailed deliberation, the CoC concluded that it was not satisfied with the feasibility and viability of the resolution plans and capability of the Resolution Applicants. Therefore, the plans submitted the Resolution Applicants were noncompliant with the mandatory provision of the Code and thus no plan was available to be put to vote. The deficiencies about the mandatory compliance observed in the resolution plans submitted by Resolution Applicants are captured in detail in the said minutes of the meeting. The Applicant craves leave to refer to and rely upon the same at the relevant time of hearing.
- p) The Applicant apprised the CoC that certain deficiencies with regard to the mandatory requirements as per the Code were observed in both the resolution plans and the PRAs were acquainted with the deficiencies on their part in the submission of resolution plans (some deficiencies were also observed in the original plans submitted by them which was informed to them but were repeated in the revised plans too) with a request to submit clarifications, if any. The details of deficiencies observed in the resolution plans were brought to the attention of

the CoC. The Applicant further apprised the CoC that pursuant to intimation of deficiencies to PRAs, the representatives of Ashtech requested a day or so to submit their response on account of a personal emergency in the family of the directors. The Applicant apprised that to cure the plan, the PRAs may have to revise the plan again which is not permissible as per the latest amendment in the CIRP Regulations as the plan has already been revised once. Moreover, due to the very limited time available for completion of the CIRP period, it is not feasible to allow any further time to Ashtech to submit clarification, if any. Therefore, the resolution plan submitted by Ashtech was considered non-compliant with regard to mandatory provisions of the Code and consequently was not placed before CoC for consideration and voting.

- q) Further, with regards to the resolution plan submitted by DAIT, only one deficiency was observed with regard to payment of the Insolvency Resolution Process Cost in priority to the payment of any other debts of the Company as per Section 30(2)(a) of the Code. While they have mentioned in the plan that CIRP Cost shall be paid in priority to all the claims as per the repayment shown, financial creditors may be paid before payment of the CIRP Cost. DAIT has again confirmed & clarified that they had proposed for payment of CIRP cost in priority to other payments and also proposed for correction of inadvertent error in the plan. Since the reply submitted by DAIT is clarifactory only and correction of error which appears bona fide, it may not be considered as revision or modification or their resolution plan. Based on the above, the Applicant confirmed that the plan submitted by DAIT complies with mandatory requirements of the plan other than confirmation by CoC that the plan demonstrate that it is feasible and viable and that the Resolution Applicant has demonstrated capability to implement the resolution plan, in terms of Regulation 3 8(3)(b) and Regulation 38(3)(e) of the CIRP Regulations.
- r) Thereafter, the CoC proceeded to evaluate the resolution plan submitted by DAIT as to feasibility, viability and capability of implementation in terms of Regulation 3 8(3)(b) and Regulation 38(3)(e) of the CIRP Regulations. After detailed deliberation, the CoC concluded that it is not satisfied with the feasibility and

viability of the plan and capability of DAIT and therefore unable to confirm the same. In view of the above, CoC advised that the plan submitted by DAIT should not be voted upon. It is submitted that on November 22, 2021, the Applicant received a mail from Axis Bank enclosing a Letter from GCMPL inter alia submitting a one-time settlement ("OTS") of Rs. 130 crores. Further, GCMPL also requested that their offer be considered as per Section 12A of the Code. Accordingly, Axis Bank also informed the Applicant to include the same in the present Application.

- s) As no plan was approved by the CoC of the Corporate Debtor, prior to the expiry of the 330-day period, the Applicant filed the First Liquidation Application seeking liquidation of the Corporate Debtor. Additionally, the CoC had also received to sell the Corporate Debtor as a going concern. Accordingly, the Applicant filed the First Liquidation Application for initiation of the liquidation process of the Corporate Debtor and for sale of the Corporate Debtor as a going concern before this Adjudicating Authority on November 24, 2021.
- t) Thereafter, on December 22, 2021, the CoC (through Axis Bank Ltd.) filed a separate application i.e. I.A. No. 5964 of 2021 seeking to appoint M/s. Think Capital Insolvency Professionals LLP as the liquidator of the Corporate Debtor. The First Liquidation Application and I.A. No. 5964 of 2021 (collectively referred to as "Applications") were extensively argued together before this Adjudicating Authority and reserved for orders on November 23, 2022. This Tribunal vide its common order Dated-March 13, 2023 rejected the Applications and held that, before filing an application under Section 33 of the Code, the minimum voting criteria as prescribed under the Code, shall not be less than 66% (sixty-six per cent) of the voting share. However, in the case of the First Liquidation Application, only 43.81 % of the CoC members voted in favor of filing the First Liquidation Application and hence the First Liquidation Application is not maintainable. As the First Liquidation Application is not maintainable, this Adjudicating Authority did not appoint a liquidator as prayed for in I.A. No. 5964 of 2021 filed by the CoC and directed the CoC to examine the matter afresh
- u) In compliance with the directions of this Adjudicating Authority, the Eighteenth

Meeting of the CoC was convened on March 23, 2023. In the Eighteenth Meeting of the CoC, the Applicant tabled the discussion on sale of the Corporate Debtor as a going concern under Regulation 32 (e) of the Liquidation Regulations. The CoC after deliberating on the same, passed a resolution inter alia:

- i. Approving the liquidation of the Corporate Debtor and authorizing the Applicant to file the Application to file the Application under Section 33(2) of the Code;*
 - ii. Sale of the Corporate Debtor as a going concern under Regulation 32(e) of the Liquidation Regulations;*
 - iii. Appointment of Mr. Huzefa Fakhri Sitabkhan (IBBI Reg. No. IBBI/IPA-001/IP-P00031/2017-18/10115) as the liquidator of the Corporate Debtor, if an order of liquidation is passed, · and*
 - iv. Fees payable to the liquidator shall be 50% of the fees as calculated as per the table prescribed in Regulation 4(2) and 4(3) of the Liquidation Regulations.*
- v) The Applicant further states that Section 33(2) of the Code provides that the Tribunal shall pass an order of liquidation of the corporate debtor if the CoC by more than 66% (Sixty-Six Per Cent) of votes passes the resolution for liquidation. In the present case of the Corporate Debtor, the CoC with 100% (One Hundred Per Cent) has approved the liquidation of Corporate Debtor. The Applicant apprised the CoC that the estimated cost of liquidation is INR 1,51,80,000/- (Rupees One Crore Fifty-One Lakhs and Eighty Thousand Only). It is submitted that this present Application relates to the initiation of the liquidation process of the Corporate Debtor under Section 33 of the Code and hence this Tribunal, has the jurisdiction to entertain and dispose of the matter. In light of the aforesaid facts, the applicant prays for the following reliefs:
- i. To pass an order requiring the Corporate Debtor to be liquidated;*
 - ii. To permit the sale of the Corporate Debtor as a going concern, as per Regulation 32 of the Liquidation Regulations;*
 - iii. To permit the sale of the Corporate Debtor as a going concern, as per Regulation 32 of the Liquidation Regulations;*

- iv. To direct the Liquidator to issue a public announcement stating that the Corporate Debtor is in liquidation;
 - v. Require such order to be sent to the authority with which the Corporate Debtor is registered;
 - vi. To issue suitable directions to the officers concerned about the initiation of the liquidation of the Corporate Debtor;
 - vii. Any other/further order which the Hon'ble Tribunal may find fit in the facts and circumstances of the present case.
3. The CoC in the 18th meeting held on 23.03.2023 with 100% voting share decided to liquidate the Corporate Debtor and proposed that Mr. Huzefa Fakhri Sitabkhan to act as Liquidator in the matter in terms of provision of IBC and authorized the Applicant i.e. Resolution Professional to move an appropriate application before the Tribunal for initiation of liquidation process of the Corporate Debtor. The extract of the resolution of 18th COC meeting passed is as below

- a) *“RESOLVED THAT, pursuant to Regulation 31 read with Regulation 33 of the CIRP Regulations, remuneration to the Resolution Professional of INR 1.50 lacs per month and to the Insolvency Professional Entity Decode Resolvency International Private Limited of INR 2.25 Lakhs per month plus respective applicable taxes and Out of Pocket Expenses on actuals, is hereby revised and approved with effect from October 01, 2022. Such fees shall be treated as part of the insolvency resolution process cost of the Corporate Debtor pursuant to Regulation 31 read with Regulation 33 of the CIRP Regulations.”*
- b) *RESOLVED FURTHER THAT to approve the liquidation of Corporate Debtor, Eurotas Infrastructure Limited, and to authorize the Resolution Professional to file application under Section 33 (2) The Insolvency and Bankruptcy Code, 2016.”*
- c) *RESOLVED FURTHER THAT Mr. Huzefa Fakhri Sitabkhan having IBBI Reg. No. IBB1/IPA-001/IP-P00031/2017-18/10115 is hereby proposed to act*

as a Liquidator for the Corporate Debtor."

- d) *RESOLVED FURTHER THAT to authorize the Liquidator to attempt to sell corporate debtor or its business as a going concern, under clause (e) or (f) of Regulation 32 of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016'."*
- e) *RESOLVED FURTHER THAT the fees payable to the liquidator shall be 50% of the fees as calculated as per the table prescribed in Regulation 4(2) and 4(3) of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

- 4. That pursuant to the above stated facts and circumstances, the Applicant has preferred the present application for passing the order of Liquidation of the Corporate Debtor and sell Corporate Debtor as a going concern in terms of provisions enumerated under Section 33(2) of the IB Code, 2016 and appoint Mr. Huzefa Fakhri Sitabkhan as Liquidator in the matter.
- 5. This Tribunal has gone through the application filed by the applicant / Resolution Professional, the present application is filed under section 33(2) of the Insolvency and Bankruptcy Code, the relevant extract of the section is reproduced as under: -

Section 33: Initiation of liquidation.

33. (1) Where the Adjudicating Authority, —

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—

(i) pass an order requiring the corporate debtor to be liquidated in

the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors [approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

6. Moreover, this Adjudicating Authority has gone through its previous order dated 13.03.2023 in I.A. No. 5530 of 2021 in CP IB 3095/ND/2019, wherein this Adjudicating Authority with respect to relief, “to permit the sale of corporate debtor as a going concern as per Regulation 32” has held that, there is a pre-requisite to that, i.e. only liquidator can proceed with sale, and secondly, as sought by the Applicant to appoint a liquidator- a valid resolution to liquidate (by not less than 66% of voting share) by COC is mandatory.
7. Further, In the matter of Sreedhar Tripathy vs. Gujarat State Financial Corporation and Ors. (12.10.2022 - NCLAT): MANU/NL/0788/2022 the Hon’ble NCLAT in para 7 stated as under: -

*The Explanation under Section 33(2) has been inserted by Act of 26 of 2019 contains the legislative declaration and intention. **The CoC in the Legislative***

Scheme has been empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The power given to the CoC to take decision for liquidation is very wide power which can be exercised immediately after constitution of the CoC. The reasons which has been given in Agenda Item 1, it is made clear by the CoC that the Corporate Debtor is not functioning for last 19 years and all machinery has become scrap, even the building is in dilapidated condition and the CIRP will involve huge costs. We are not convinced with the submission of learned counsel for the Appellant that the CoC's decision is an arbitrary decision. CoC is empowered to take decision under the statutory scheme and when in the present case the decision of the CoC for liquidation has been approved by the Adjudicating Authority, we see not good ground to interfere at the instance of the Appellant. However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I & B Code or not. With these observations, the Appeal is dismissed.

8. In light of the above judgment, the CoC in the legislative scheme is empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The aforesaid resolution was approved by the members of COC unanimously with 100% voting shares, in its 18th meeting held on 23.03.2023. It is well settled that decision taken by CoC for liquidation in commercial wisdom of the CoC should not be interfered with by the Adjudicating Authority. Further the resolution for liquidation of CD was approved by COC with 100% voting. Therefore, this Tribunal sees no merit in interfering with the commercial wisdom of the CoC.
9. In light of the above, the application is **allowed** by ordering liquidation of the

corporate debtor, namely M/s Eurotas Infrastructure Limited with following directions:

- a) That Mr. Ram Singh Setia, the Resolution Professional of the Corporate Debtor, is relieved from the present assignment as Resolution Professional.
- b) That Mr. Huzefa Fakhri Sitabkhan, holding Registration No. *IBB1/IPA-001/IP-P00031/2017-18/10115* is appointed as the Liquidator in terms of Section 32(1) of the Code;
- c) Registry is directed to communicate this Order to the Registrar of Companies, NCT of Delhi & Haryana and to the Insolvency and Bankruptcy Board of India;
- d) The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- e) This order shall be deemed to be notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- f) The Liquidator is directed to proceed with the process of liquidation in the manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- g) The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- h) The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor as per law.
- i) The Liquidator shall submit Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation

Process) Regulations, 2016;

- j) Copy of this order be sent to the financial creditors, corporate debtor, CoC members and the Liquidator for taking necessary steps;
- k) The CoC is directed to pay the remuneration and expenses of the Applicant including that of professional advisors subject to the provisions of IBC Code, 2016 and CIRP Regulations, 2016.

I.A 2582/2023 filed in CP(IB) 3095/ND/2019 is disposed of in terms of the aforesaid terms.

Sd/-
RAHUL BHATNAGAR
Member (Technical)

Sd/-
MAHENDRA KHANDELWAL
Member (Judicial)