**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re:<br><br>ESSAR STEEL MINNESOTA LLC *and* ESML HOLDINGS INC.,<br><br>Reorganized Debtors. | Chapter 11<br><br>Case No. 16-11626 (CTG)<br><br>(Jointly Administered) |
| KEVIN NYSTROM, solely in his capacity as Litigation Trustee for the UC LITIGATION TRUST,<br><br>Plaintiff,<br><br>v.<br><br>MADHU VUPPULURI; SANJAY BHARTIA; PRASHANT RUIA; ANSHUMAN RUIA, and DOES 1-500,<br><br>Defendants. | Adv. Proc. No. 17-50001 (CTG)<br><br>**Related Docket No. 185** |

**MEMORANDUM OPINION**

Defendant Prashant Ruia, a former director of Essar Steel, moves to dismiss the claims asserted against him in a complaint filed by a litigation trust that was created in Essar Steel's bankruptcy case.[1] The operative complaint alleges that certain individuals who owed fiduciary duties to Essar Steel breached those duties by improperly diverting Essar Steel's assets, and that other defendants, including Ruia, aided and abetted those breaches. The allegation is that the defendants funneled the

[1] Essar Steel Minnesota LLC is referred to as "Essar Steel." Its parent company, Essar Global Fund Limited, is referred to as "Essar Global." Under Minnesota law, the terms "director" and "governor" are used interchangeably. *See* Minn. Stat. § 322C.0102, subd. 11 (2020); *see also* D.I. 175 n. 41.

assets of Essar Steel to other affiliates of Essar Global to prop up the deteriorating financial condition of the broader Essar Global empire, all to the detriment of Essar Steel. The complaint alleges that this diversion of corporate resources prevented Essar Steel from fulfilling its plan to build a state-of-the-art iron and mine pellet plant in northern Minnesota, and instead left Essar Steel with a half-completed plant that will cost hundreds of millions of dollars to complete.

Ruia is a resident of India and alleged to be the son and nephew of the founders of Essar Global. In moving to dismiss the complaint, he argues that: (i) the Court lacks subject-matter jurisdiction over this action because the confirmed plan of reorganization in this case does not authorize the trust to assert a claim against him; (ii) the Court lacks personal jurisdiction over him because he does not have sufficient contacts with the United States to warrant the exercise of personal jurisdiction; and (iii) the complaint fails to alleges facts sufficient to support a claim for aiding and abetting breach of fiduciary duty. D.I. 202.

None of the three arguments provides a basis to dismiss the complaint. The claim that the plan did not authorize the trust to assert claims against Ruia fails because it is inconsistent with the language of the plan itself. The second and third arguments essentially collapse into a single question: whether the specific factual allegations of the complaint support an inference that Ruia, while physically located in India, engaged in communications with the other defendants (who were then governors of Essar Steel) in which he urged them to use the assets of Essar Steel to benefit other subsidiaries of Essar Global, all the while knowing of Essar Steel's own

financial distress. If so, the allegations suffice both to support personal jurisdiction and to state a claim for aiding and abetting breach of fiduciary duty under Minnesota law. The Court concludes that the allegations of the complaint are sufficient in this regard.

The complaint's specific factual allegations are that Essar Steel's governors, immediately following discussions with Ruia, transferred Essar Steel's funds to other Essar Global subsidiaries, for purposes unrelated to the Essar Steel project. Those specific allegations (which must be taken as true on a motion to dismiss) support an inference that Ruia directed or encouraged the Essar Steel directors to make those transfers. The Court will therefore deny Ruia's motion on all grounds.

**Factual and Procedural Background**

The background of this dispute is set forth more fully in Judge Shannon's decision denying other defendants' motion to dismiss the complaint that is at issue here, which is the Third Amended Complaint.[2] As relevant here, the debtors filed for bankruptcy under chapter 11 in July 2016. The plan of reorganization, which was confirmed in June 2017, became effective in December 2017.[3] The plan created two litigation trusts—a secured creditor trust and an unsecured creditor trust.[4] Only the unsecured creditor trust, which is referred to here as the "UC trust," is relevant to

[2] *In re Essar Steel Minnesota LLC*, No. 16-11626 (BLS), 2021 WL 1812666 (Bankr. D. Del. May 5, 2021) (docketed at D.I. 175) (denying the motions to dismiss that were filed by defendants Madhu Vuppuluri and Sanjay Bhartia).

[3] In the main bankruptcy case (No. 16-11626), the plan of reorganization is docketed at D.I. 990 (and cited to as the "Plan"), the confirmation order is docketed at D.I. 1025, and notice of effective date is docketed at D.I. 1398.

[4] Plan § 8.1.

the issues in this proceeding. Under the plan, Kevin Nystrom, as trustee of the UC trust, is granted authority to bring claims that could otherwise have been asserted by Essar Steel against "any natural person who was or is an officer, director, manager, Insider, or controlling equity holder of any debtor."[5]

Nystrom filed this adversary proceeding in January 2017. In his complaint, Nystrom asserts claims of breach of fiduciary duty against Essar Steel's former directors, Madhu Vuppuluri and Sanjay Bhartia, and an aiding and abetting breach of fiduciary duty claim against Prashant Ruia. D.I. 121 at 45-49.

The complaint identifies three transactions in which Ruia is alleged to have been involved. *First*, the complaint alleges that Vuppuluri, one of Essar Steel's two directors, transferred $5 million from Essar Steel to Trinity Coal Corporation, an Essar Global subsidiary, for purposes unrelated to the Essar Steel project, for no consideration. D.I. 121 ¶¶ 64-67. It is alleged that Vuppuluri did not discuss the transaction with the Board of Essar Steel, but rather "authorized the transfer following a discussion with Defendant Prashant Ruia." *Id.* ¶ 65.

*Second*, the complaint alleges Ruia was copied on an email, related to a meeting with ICICI Bank Limited, that explained that Essar Steel was in dire financial straits, with its project at a "standstill" and "left with no funds." *Id.* ¶ 48. The complaint alleges that, nevertheless, "at the request of Essar Global" (and "adher[ing] to Mr. Ruia's demands"), Essar Steel drew down $79 million on a loan from ICICI and lent those funds to Essar Global. *Id.* ¶¶ 68-74.

[5] *Id.* at §§ 1.1(72), 8.3.

*Third*, the complaint alleges that Essar Steel's funds were used to open letters of credit, for the benefit of other Essar Global entities, that had no relation to the Essar Steel project. The complaint alleges that when an Essar Global affiliate explained the need to fund the letters of credit to resolve severe financial difficulties faced by other Essar Global affiliates, Ruia responded to the email, copying Vuppuluri, saying that Vuppuluri should "Pls revert on the solution ASAP." *Id.* ¶ 85.

On June 1, 2021, Ruia moved to dismiss the complaint. D.I. 185 & 186.

**Jurisdiction**

As described below, the Court has subject-matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334. As a case within the district court's bankruptcy jurisdiction, it has been referred to this Court under the district court's standing order of reference.[6]

The complaint alleges that this dispute is a core proceeding pursuant to 28 U.S.C. § 157(b). D.I. 121 ¶ 14. Ruia's motion to dismiss does not expressly state whether he agrees that the matter is core but does state that Ruia does not consent to the entry of final judgment. D.I. 185 at 2. Such consent would be required only if this were a non-core matter. *See* 28 U.S.C. § 157(c)(2). As Fed. R. Bankr. P. 16(b) provides, this Court will address at a later point in these proceedings whether the matter is core or non-core and whether it may enter judgment or should instead make proposed findings and conclusions. That question is not addressed by this opinion.

[6] *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated Feb. 29, 2012.

## Analysis

Pursuant to Federal Rule of Civil Procedure 8(a)(2), made applicable to this proceeding by Bankruptcy Rule 7008, a complaint must contain a "short and plain statement of the claims showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).[7] The purpose of this rule is to provide the defendant with fair notice of the claims alleged against him such that he can adequately defend himself against those claims.[8] The factual allegations in a complaint need not be detailed but must provide notice to the defendant "as to the basics of the complaint"[9] and set forth fact-based allegations that stretch beyond "naked assertions" and conclusory allegations.[10]

As the Supreme Court's decisions in *Iqbal* and *Twombly* direct, in considering a motion to dismiss a court employs "a plausibility standard – it requires more than a sheer possibility that a defendant acted unlawfully but is not akin to the probability standard. Rather, a plaintiff must allege sufficient facts to nudge the claims across the line from conceivable to plausible."[11]

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[7] *See also Connelly v. Lane Construction Corp.*, 809 F.3d 780, 786 (3d Cir. 2016) (highlighting that a complaint can be dismissed for failing to state a claim, but that "detailed pleading" is not required).

[8] *In re Zohar III*, No. 18-10512 (KBO), 2021 WL 3124298 at *13 (Bankr. D. Del. Jul. 23, 2021) (citing *In re Lexington Healthcare Grp., Inc.*, 339 B.R. 570, 575 (Bankr. D. Del. 2006)).

[9] *Id.*

[10] *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2008) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

[11] *Superior Silica Sands LLC v. Iron Mountain Trap Rock Co.*, No. 20-51052 (KBO) (Bankr. D. Del. Aug. 26, 2021) (Memorandum Order Granting in Part and Denying in Part Defendants' Motion to Dismiss the First Amended Complaint) (internal quotations and citations omitted).

The Third Circuit explained in *Burtch v. Milberg Factors, Inc.*[12] that this analysis entails a three-step process. A court should: (i) identify the elements of the claim alleged by the plaintiff, (ii) identify and separate the well-pleaded facts from legal conclusions, and (iii) "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief."[13] Particularly relevant to the current motion, in considering a motion to dismiss a court must "draw all reasonable inferences," from the facts as they are alleged, "in favor of the non-moving part[y]."[14]

## I. This Court has subject-matter jurisdiction over the aiding and abetting claim asserted against Ruia.

Ruia argues that the Court lacks subject-matter jurisdiction over this dispute because the trust documents limit Nystrom to suing only current and former officers, governors, or employees of Essar Steel, and that Ruia was not an officer, governor, or employee during the time of the transfers in question.[15] D.I. 186 at 8. For the reasons described below in Part I.B, the Court regards that argument as presenting a "merits" question rather than a "jurisdictional" question within the strict meaning of that term (whether the court has the statutory authority to resolve the dispute). There is,

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[12] 662 F.3d 212, 221 (3d Cir. 2011) (quoting *Santiago v. Warminster Township*, 629 F.3d 121, 130 (3d Cir. 2010)).

[13] *Crystallex Int'l Corp. v Petrolesos De Venezuela, S.A.*, 879 F.3d 79, 83 n.6 (3d Cir. 2018) (quoting *F.T.C. v. Wyndham Worldwide Corp.*, 799 F.3d 236, 242 (3d Cir. 2015)); *see also Fowler v. UPMC Shadyside*, 578 F.3d 203, 206 (3d Cir. 2009).

[14] *Bohus v. Restaurant.com, Inc.*, 784 F.3d 918, 921 n.1 (3d Cir 2015).

[15] Plan §§ 8.2-8.3; UC Litigation Trust Agreement §§ 1.2-1.4.

however, a distinct question of subject-matter jurisdiction under 28 U.S.C. § 1334(b) that arises because the plan at issue here had already been confirmed before the complaint was filed. In view of court's *sua sponte* obligation to assure itself of its own subject-matter jurisdiction, this issue is close enough to warrant discussion (although it was not raised by the parties) and is addressed immediately below.[16]

**A. This case is within the jurisdiction created in Section 1334(b).**

The asserted basis for the Court's subject-matter jurisdiction over this dispute is 28 U.S.C. § 1334(b), which creates subject-matter jurisdiction over all matters "related to" the bankruptcy case. As case law explains, that provision creates bankruptcy jurisdiction over all matters that might have a "conceivable effect" on the bankruptcy estate.[17] The bankruptcy estate, however, ceases to exist after a chapter 11 plan becomes effective.[18] Moreover, provisions of a plan of reorganization that purport to "preserve" post-confirmation jurisdiction are effective only if such jurisdiction exists in the first instance as a statutory matter. "If there is no

[16] *See* Fed. R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."); *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) (explaining how questions of a court's subject-matter jurisdiction may be raised at any time, and discussing the court's *sua sponte* obligation to satisfy itself of its subject-matter jurisdiction).

[17] *In re Resorts Int'l, Inc.*, 372 F.3d 154, 164 (3d Cir. 2004) (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

[18] *Id.* at 165 ("At the most literal level, it is impossible for the bankrupt debtor's estate to be affected by a post-confirmation dispute because the debtor's estate ceases to exist once confirmation has occurred.") (citing *In re Fairfield Cmtys.*, 142 F.3d 1093, 1095 (8th Cir. 1998)).

jurisdiction under 28 U.S.C. § 1334 … retention of jurisdiction provisions in a plan of reorganization or trust agreement are fundamentally irrelevant."[19]

As the case law explains, the post-confirmation jurisdiction of the bankruptcy court shifts from matters that may have a "conceivable effect" on the *estate* (because it no longer exists) to matters that have "a close nexus to the bankruptcy plan or proceeding" and those that "affect[] the interpretation, implementation, consummation, execution, or administration of a confirmed plan or incorporated litigation trust agreement."[20]

In the context of causes of action that are transferred to a post-confirmation trust, the prevailing view in this jurisdiction is that matters that may arise and "affect the interpretation, implementation, consummation, execution, or administration of the confirmed plan" will generally be considered to have a close nexus.[21] As particularly relevant here, the Court held in *In re Seaboard Hotel* that a dispute between a defendant and the litigation trustee with respect to whether a plan assigned the claims being asserted to the trust brought the case within the post-

[19] *Id.* at 161.

[20] *In re East West Resort Development V, L.P., L.L.L.P.*, No. 10-10452 (BLS), 2014 WL 4537500, at *1 (Bankr. D. Del. Sep. 12, 2014) (citing *Resorts Int'l.*, 372 F.3d at 168-69); *see also In re EXDS, Inc.*, 352 B.R. 731, 735 (Bankr. D. Del. 2006).

[21] *In re MPC Computers, LLC*, 465 B.R. 384, 387 (Bankr. D. Del. 2012) (quoting *Resorts Int'l*, 372 F.3d at 166).

confirmation related-to jurisdiction.[22] The court reasoned that the "need to interpret the Plan satisfie[d] the 'close nexus' test."[23]

That principal controls here. As described below in Part I.B, Ruia defends against this lawsuit on the ground that the plan and trust documents accompanying the plan do not provide the UC trust the authority to sue him.[24] Although the plan authorizes suit against former governors, Ruia argues that the plan does not authorize this lawsuit because he was not a governor during the "relevant period." Resolving this dispute requires the Court to construe and interpret the plan and trust documents. Under the rationale of *Seaboard Hotel*, that is sufficient to bring the case within the post-confirmation related-to jurisdiction.

### B. The trust is authorized, under the terms of the plan, to assert this claim against Ruia.

Ruia contends that the Court lacks "subject-matter jurisdiction" over this action because this lawsuit falls outside the scope of claims assigned to the UC trust under the plan, and as such, the UC trust lacks "standing" to assert it.

As an initial matter, the Court regards this argument as presenting a merits issue rather than a jurisdictional issue. It is true that Article III standing is a jurisdictional requirement, and the absence of standing will defeat subject-matter

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[22] *In re Seaboard Hotel Mbr. Assocs., LLC*, No. 19-50257 (LSS), 2021 Bankr. LEXIS 1564, at *17-18 (Bankr. D. Del. Jun. 10, 2021).

[23] *Id.* at *18.

[24] Plan §§ 1.1(72), 8.1-8.3 (giving Nystrom, litigation trustee of the UC trust, the authority to bring suit against "any natural person who *was* or is an officer, director, manager, Insider, or controlling equity holder of any debtor.") (emphasis added).

jurisdiction.[25] But that is true only of *constitutional* standing (which, as the Supreme Court's *Lujan* decision explains, requires injury in fact, traceability, and redressability,[26] none of which is challenged here). By contrast, the Supreme Court explained in *Steel Company v. Citizens for a Better Environment* that "the absence of a valid … cause of action does not implicate subject-matter jurisdiction."[27] Otherwise, "those statutory arguments, since they are 'jurisdictional,' would have to be considered by this Court even though not raised earlier in the litigation— indeed, this Court would have to raise them *sua sponte*."[28]

Ruia's challenge likewise bears on the trust's authority to assert the claim, not the Court's authority to hear the cause of action. As such, Ruia's argument bears on the merits of the trust's claim, not on the Court's subject-matter jurisdiction as that term is used in the formal sense.

That being said, it remains the case that the trust is bound by the terms of the plan, 11 U.S.C., § 1141(a), and cannot bring a lawsuit that is outside the scope of the authority that the plan vests in the trust. This lawsuit, however, is within the scope of that authority. The plan establishes a trust that is vested with the authority to bring "individual claims" on behalf of the estate.[29] Under the plan, "individual claims" is a defined term:

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[25] *Davis v. Wells Fargo,* 824 F.3d 333, 346 (3d Cir. 2016).

[26] *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

[27] 523 U.S. 83, 89 (1998).

[28] *Id.* at 93.

[29] Plan § 8.1-8.2.

> "Individual Claims" means all Transferred Causes of Action of any Debtor against any natural person who was or is an officer, director, manager, Insider or controlling equity Holder of any Debtor including claims for breach of fiduciary duties or other tort committed by any such person, and the right to receive all proceeds in respect thereof, including any proceeds of D&O Insurance Policies.[30]

Ruia is a natural person. The complaint alleges that he is a former governor (*i.e.*, director) of Essar Steel, D.I. 121 ¶ 26. Ruia's argument is that he was not a governor during the "relevant period," *id*., by which Ruia means that he was not a governor at the time when his alleged actions that are the basis for his claimed liability, took place. The plan, however, does not require that a defendant in a lawsuit brought by the trust to have been a director at the time the alleged acts took place is absent in the plan. Ruia, therefore, as a former governor of Essar Steel, falls within the category of persons against whom Nystrom can bring suit on behalf of the estate.

Ruia alternatively contends that, "read as a whole," the plan provision should be construed to grant the trust only the authority to pursue claims that were covered by "D&O Insurance Policies." D.I. 208 at 4-5. But that is not how the term "Individual Claims" is defined. Fairly read, the language (set forth in the block quote above) permits the UC trust to assert "all Causes of Action … of any kind or nature whatsoever" (subject to exceptions that do not apply here) "against any natural person who was or is an officer, director, manager, Insider or controlling equity Holder of any Debtor."[31] The rights assigned to the trust "include[]" the right to pursue the proceeds of insurance coverage. Both the Bankruptcy Code and the plan

[30] Plan § 1.1(72).

[31] Plan §§ 1.1(72) & 1.1(164).

instruct that "the terms 'includes' and 'including' are not limiting."[32] Accordingly, the plan assigned the UC trust the authority to assert the claims against Ruia that are set forth in the Third Amended Complaint.

## II. The Court has personal jurisdiction over Ruia.

Ruia makes two principal arguments with respect to personal jurisdiction. *First*, he argues that virtual contacts are insufficient to establish personal jurisdiction. Specifically, he argues that his contacts with the United States are infrequent and innocuous, and therefore, insufficient to establish minimum contacts with respect to personal jurisdiction. *Second*, he argues that the complaint's allegations lack specificity regarding the details of Ruia's involvement, and therefore that one cannot reasonably infer from those allegations that Ruia engaged in conduct that would subject him to personal jurisdiction. Sept. 10, 2021 Hearing Tr. 21.

When the defendant moves to dismiss on the personal jurisdiction grounds, the burden is on the plaintiff to point to allegations in the complaint sufficient to establish personal jurisdiction.[33] As this Court explained in *In re Astropower Liquidating Trust*,[34] personal jurisdiction in bankruptcy is governed by Fed. R. Bankr. P. 7004(f), which provides that the court has personal jurisdiction over any person who has been validly served with process, so long as the exercise of jurisdiction "is consistent with

[32] 11 U.S.C. § 102(3); Plan § 1.3.

[33] *See O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 316 (3d Cir. 2007) ("Once challenged, the plaintiff bears the burden of establishing personal jurisdiction."); *Carteret Sav. Bank, FA v. Shushan*, 954 F.2d 141, 142 n.1 (3d Cir. 1992) ("We are satisfied that courts reviewing a motion to dismiss a case for lack of in personam jurisdiction must accept all of the plaintiff's allegations as true and construe disputed facts in favor of the plaintiff.").

[34] 335 B.R. 309 (Bankr. D. Del. 2005).

the Constitution and laws of the United States." Accordingly, while in other contexts a defendant must have sufficient minimum contacts with "the forum,"[35] in the bankruptcy context the exercise of personal jurisdiction is appropriate so long as the defendant has sufficient minimum contacts with the United States as a whole.[36]

**A. Virtual contacts may be sufficient to satisfy minimum contacts.**

Much of the parties' briefing is devoted to the question whether "virtual" contacts may be sufficient to permit the exercise of personal jurisdiction, and if so the quality and quantity of the contacts that are necessary. Ruia, for example, contends that the "few evanescent contacts" alleged in the complaint "are not sufficiently substantial to create personal jurisdiction." D.I. 186 at 22. Nystrom responds by pointing to caselaw in which courts have found mail and telephone contacts sufficient to support the exercise of personal jurisdiction. D.I. 202 at 17-18. And in his reply, Ruia argues that the cases on which Nystrom relies (that hold "virtual" contacts to be sufficient) involve a larger number of calls and emails than are alleged in the complaint here.

The touchstone for the enquiry, however, is whether the contacts satisfy the "traditional notions of fair play and substantial justice" that are grounded in the constitutional requirement of due process. Resolving that question depends on the

[35] *International Shoe v. Washington*, 326 U.S. 310, 316 (1945).

[36] *See also In re UD Dissolution Corp.*, 629 B.R. 11, 25 (Bankr. D. Del. 2021); *In re Automotive Refinishing Paint Antitrust Litig.*, 358 F.3d 288, 298-99 (3d Cir. 2004) (observing that "a 'national contacts analysis' is appropriate when appraising personal jurisdiction in a case arising under a federal statute that contains a nationwide service of process provision," as Bankruptcy Rule 7004 contains.) (internal quotations omitted).

nature of virtual contacts rather than on their volume alone. Thus, the Third Circuit has explained that "even a single telephone call into the forum state can support jurisdiction."[37] Indeed, counsel for Ruia correctly acknowledged that "there could be a contact of such significance that one, even if virtual, is enough." Sept. 10, 2010 Hearing Tr. at 28. Under the applicable analysis, therefore, the more closely related the alleged contacts are to the claim asserted, the more likely they are to be viewed as sufficient to support the exercise of personal jurisdiction. The relevant question, then, is whether the contacts alleged in the complaint are sufficient to meet that standard. As set forth below, the Court concludes that, when one draws reasonable inferences from the specific allegations in favor of the non-moving party (as the law requires at the motion to dismiss stage), the allegations are sufficient.

### B. Drawing reasonable inferences in favor of the non-moving party, the complaint alleges contacts that bear directly on the claim asserted.

For the reasons described above, if the complaint directly and specifically alleged that Ruia, while physically located outside the United States, had telephone calls and sent emails to Essar Steel officials, located in the United States, in which he directed or cajoled or persuaded them to divert the assets of Essar Steel for the benefit of other Essar Global affiliates, such allegations would clearly be sufficient to survive a motion to dismiss on personal jurisdiction grounds. Although the complaint

[37] *See, e.g., Grand Entertainment Group, Ltd.*, 988 F.2d 476, 482 (3d. Cir. 1993) (quoting *Taylor v. Phelan*, 912 F.2d 429, 433 n.4 (10th Cir. 1990)) ("So long as it creates a substantial connection, even a single telephone call into the forum state can support jurisdiction."); *see also In re UD Dissolution Corp.*, 629 B.R. 11, 27-28 (Bankr. D. Del. 2021) (personal jurisdiction existed over a director of a U.S. company, domiciled in Canada, who participated by phone in board meetings related to a challenged transaction).

does not make such specific and direct allegations, Nystrom correctly argues that such inferences can reasonably be drawn from the specific allegations the complaint does include. It is settled law that courts, in considering a motion to dismiss, must draw all reasonable inferences and resolve all ambiguities regarding the factual allegations, in the light most favorable to the non-moving party.[38] Here, the reasonable inferences drawn from the complaint are sufficient to avoid dismissal.

Broadly speaking, the complaint alleges that the entire Essar Global conglomerate was facing financial distress throughout the relevant time period. D.I. 121 ¶ 1. It further alleges that Ruia was the "de facto CEO" of Essar Global, *id.* ¶ 27, and that he "exercised domination and control over all significant financial transactions and payments to and from [Essar Steel]." *Id.* ¶ 26.

More specifically, the complaint alleges that funds were transferred from Essar Steel to another Essar Global affiliate, Trinity Coal, shortly after Ruia's phone call with Vuppuluri. *Id.* ¶ 65. It further alleges that, "at the urging of Defendant Ruia," Essar Steel funded letters of credit for the benefit of other Essar Global affiliates. *Id.* ¶ 84.

At least with respect to the Trinity Coal transfer, the allegation is that the transfer took place on "[t]he same day" as the conversation between Vuppuluri and Ruia. Similarly, the complaint's factual allegation regarding the letter of credit is that Ruia responded to an email sent by others from Essar Global and instructed

[38] *Crystallex Int'l Corp.*, 879 F.3d at 83 n.6 (quoting *F.T.C. v. Wyndham Worldwide Corp.,* 799 F.3d 236, 242 (3d Cir. 2015)); *see also Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003) (citing *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 368 (3d Cir. 2002)).

Vuppuluri to "PLS revert on the solution ASAP." *Id.* ¶ 85. And the complaint alleges that the next business day, the requested funds were transferred. *Id.* ¶ 87. Under the totality of the circumstances alleged in the complaint, one may reasonably infer from the allegations of the complaint that Ruia directed or urged Vuppuluri to make the transfers in question. In these circumstances, such alleged contacts are sufficient to conclude that Ruia has "purposefully availed" himself of the United States in a manner that is sufficient to support the exercise of personal jurisdiction.

## III. The complaint contains sufficient factual allegations of aiding and abetting a breach of fiduciary duty.

For largely the same reason, the complaint adequately states a claim for aiding and abetting breach of fiduciary duty.

Under Minnesota law, to establish a claim for aiding and abetting the tortious conduct of another, (i) the primary and alleged tort-feasor must commit a tort that causes an injury to the plaintiff; (ii) the defendant must know that the primary tort-feasor's conduct constitutes a breach of duty; and (iii) the defendant must substantially assist the primary or alleged tort-feasor in breaching his duty.[39]

Ruia contends that the complaint fails to plead plausible facts, and instead, makes conclusory statements that cannot be considered in deciding whether the complaint states a claim. For these purposes, a "conclusory statement" is one that merely recites the elements of a claim with no factual content.[40] Ruia argues that

[39] *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 187 (Minn. 1999).

[40] *Connally v. Lane Constr. Corp.*, 809 F.3d 780, 790 (3d Cir. 2016) (quoting *Peñalbert-Rosa v. Fortuño-Burset*, 631 F. 3d 592, 595 (1st Cir. 2011)).

Nystrom failed to cite factual allegations regarding Ruia's knowledge of the Essar Steel's critical financial condition.

For the reasons described above, the Court is satisfied that the complaint makes adequate factual allegations regarding Ruia's knowledge of Essar Steel's financial distress. For example, the complaint quotes a 2013 email sent to Ruia that describes Essar Steel's dire financial circumstances. D.I. 121 ¶ 48. And while Ruia points out that this email was received after the 2012 transfer to Trinity Coal, it was two years prior to the funding of the letters of credit in 2015. In sum, taking all well-pleaded facts as true, drawing all reasonable inferences, and resolving all ambiguities in the light most favorable to the non-moving party, the complaint pleads facts sufficient to show that Ruia urged those who owed fiduciary duties to Essar Steel to make the transfers, which allegedly provided no benefit to Essar Steel. That is sufficient to state a claim of aiding and abetting a breach of fiduciary duty.

**Conclusion**

For the foregoing reasons, the Court finds that Nystrom has met his burden in pleading plausible factual allegations to show the Court has subject-matter jurisdiction over this matter, personal jurisdiction over Ruia, and has pled facts sufficient to state a claim for aiding and abetting breach of fiduciary duty. The Court will issue a separate order denying the motion to dismiss.

Dated: September 27, 2021

CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE