

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**  
**(through web-based video conferencing platform)**

**C.P. (IB) No.07/BB/2021**  
**Under Section 95(1) of the IBC, 2016**  
**r/w Rule 7(2) of the I&B (Application to**  
**Adjudicating Authority for Insolvency**  
**Resolution Process for Personal Guarantors**  
**to Corporate Debtors) Rules, 2019**

**IN THE MATTER OF:**

**State Bank of India**

*Rep. by its Asst. General Manager,*  
Stressed Assets Management Branch,  
2<sup>nd</sup> Floor, Office Complex Building,  
Local Head Office Campus,  
No. 65, St. Marks Road,  
Bengaluru – 560 001

... Applicant/Financial Creditor

**VERSUS**

**Mr. Naseer Ahmed,**

No. 391, 2<sup>nd</sup> Cross,  
2<sup>nd</sup> Main, 2<sup>nd</sup> Stage,  
80 feet Road, RMV Extension,  
Bengaluru – 560 058

... Respondent/Personal Guarantor

**Order delivered on: 02<sup>nd</sup> December, 2021**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)**

**Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)**

**Present:**

For the Applicant/Financial Creditor : Ms. P Chitra Nirmala

For the Respondent : Shri G. Sridhar

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**ORDER****Per: Ajay Kumar Vatsavayi, Member (Judicial)**

1. The present Application is filed by State Bank of India, represented by its Assistant General Manager through Resolution Professional (**for brevity 'Applicant/Financial Creditor'**), under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, (**for brevity 'IBC'/'Code'**), r/w Rule 7(2) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019 (Form C) with a prayer to initiate Insolvency Resolution Process against Mr. Naseer Ahmed (**hereinafter called as "Personal Guarantor/Respondent"**).
2. It is stated that the Corporate Debtor M/s. Scotts Garments Limited had sought for certain facilities from the Financial Creditor which was sanctioned on 01.03.2017. The details of the facilities sanctioned are as under:

	Facility from SBI	Amt sanctioned on 01.03.2017 (in crores)
1.	EPC	55,00,00,000
2.	PCFC (Sub-limited within EPC)	(55,00,00,000)
	FBD/EBR	22,00,00,000
3.	SLC	5,00,00,000
	Letter of credit	10,00,00,000
	Bank Guarantee	40,00,000
	Credit exposure limit	2,40,00,000
	Total	94,80,00,000

100% one way interchangeability between FBD/EBR to EPC/PCFC (pre-shipment).

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3. It is stated that the consortium of Banks had entered into an Inter-se agreement dated 26.04.2017 on the security extension and coverage and other terms and conditions governing the Consortium, the Security Trustee Agreement and the Working Capital Consortium Agreement (Annexure 18 to 20). It is further submitted that the Corporate Debtor and the Corporate Guarantors have created mortgage of immovable properties belonging to them, and have also created hypothecation of the movables in favour of the Financial Creditor and the other Bankers of the Consortium as security to the credit facilities availed by the Corporate Debtor by executing a Memorandum of Entry dated 17.07.2017 registered as Doc. No. LAG-1-00850-2017-18 stored in CD No. LAGD257, in the office of the Sub-Registrar, Laggere (Annexure-22).
4. It is stated that the Corporate Debtor has availed the financial facilities, and utilized the same for its business purposes as and when needed, however it has defaulted in repayment of the facilities availed. Hence the account of the Corporate Debtor was classified as a Non-Performing Asset on 18.03.2018.
5. It is submitted that the Operational Creditor namely M/s. Saravana Distributors had initiated an application u/s 9 seeking Corporate Insolvency Resolution Process against the Corporate Debtor, numbered as C.P (IB) No. 66/BB/2018 before this Tribunal which was admitted on 13.08.2018 and moratorium was imposed.
6. On 23.05.2019 the Consortium of Bankers through its lead Bank i.e Canara Bank had filed an O.A No. 1218/2019 before the Debt Recovery Tribunal against the guarantors and the Corporate Guarantors and the same is pending adjudication. In the CIR proceedings a Resolution Plan was submitted by a Resolution Applicant M/s. Lenin Art Private Limited, and this Hon'ble Tribunal had approved the Resolution plan vide order

dated 16.09.2019, however the Resolution Applicant has failed in compliance of the Resolution plan.

7. It is submitted that the Financial Creditor through the Lead Bank had invoked the Personal guarantee of the Guarantor Mr. Naseer Ahmed by issuing guarantee invocation letter dated 07.11.2018 calling upon the guarantor to clear the outstanding liability of the Corporate Debtor. Despite notice being served duly, the Guarantor had neither replied nor had made payment towards their dues.
8. It could be seen that a Demand Notice (Form B) dated 21.09.2020 was issued by the Financial Creditor to the Personal Guarantor to make the payment of his liabilities. However, the Guarantor had chosen to refute the claim and issued a reply notice on 08.10.2020. The Financial Creditor had suitably replied the said letter of the Personal Guarantor vide its letter dated 09.11.2020 (Annexure 9) wherein it had been highlighted that the liability of the Guarantor had been appropriately quantified after giving due credits to the payments received including those part payments received from the Resolution Applicant.
9. Further, it is submitted that the Financial Creditor has maintained the accounts of the Corporate Debtor in the ordinary and usual course of business which reflect all the payments made to the Corporate Debtor and the repayments received. The Accounts are maintained under the Bankers Book of Evidence Act and are duly certified by the Competent Authority.
10. In Part III of Form C, the total debt from the Personal Guarantor by way of personal guarantee given to the Corporate Debtor is shown as 139,33,06,740/- (One Hundred and Thirty nine crores thirty three lakhs six thousand and seven hundred and forty only) as on 31.08.2020.

11. Heard Mrs. Chithra Nirmala, learned Counsel for the Applicant/Financial Creditor. We have heard the learned counsel for the Applicant and perused the pleadings on record.
12. This Application has been filed by State Bank of India represented by its Assistant General Manager under Section 95(1) of the Code, r/w Rule 7(2) of the I&B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, against Mr. Naseer Ahmed, the Personal Guarantor of the Corporate Debtor.
13. It is clarified that from the date of filing this Application i.e. 08.01.2021 by the Applicant/Financial Creditor, Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantor. During the Interim Moratorium period: (i) any legal action or proceedings pending in respect of any debt shall be deemed to have been stayed: and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt. As per Section 96(3) of the Code, the provisions of Sub-section 96(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
14. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Applicant but also to safeguard the assets of the Personal Guarantor in terms of the provisions of the Code. Since, the present Application has been filed by the State Bank of India, represented by its Assistant General Manager through the Resolution Professional, Shri Hem Chandra bearing Registration No. IBBI/IPA-003/IP-N000155/2018-19/11845, this Bench confirms the appointment of the Resolution Professional in the matter.

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15. The Applicant/Financial Creditor is directed to serve the copy of this order along with copy of the Application and documents immediately on the Resolution Professional by all modes.
16. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code, r/w Rules made thereunder. He is directed to make the recommendations with reasons in writing for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the Code. The Resolution Professional shall provide a copy of the report under sub-Section 7 of Section 99 to the Creditor as well as to the Personal Guarantor as soon as the same is filed before this Authority.
17. List the matter for further proceedings in this case on 17.01.2022.

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**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

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**(AJAY KUMAR VATSAVAYI)**  
**MEMBER (JUDICIAL)**

Gayathri