

FREE OF COST COPY

sl No. 468

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.08/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

Recd
M V
10/12/2021

State Bank of India
through Mr. Hem Chandra,
Insolvency Resolution Professional
(IBBI/PA-003/IP-N000155/2018-19/11845)
2nd Floor, Office Complex Building
Local Head Office Campus
No.65, St.Marks Road,
Bengaluru 560 001

... Applicant/Financial Creditor

VERSUS

Mr. Awaiz Ahamed
69-B, Shoba Malachite, Bellary Road,
Jakkur, Behind Shlip School,
Bangalore - 560 064

... Respondent/Personal Guarantor

Order delivered on 2.12.2021

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner

: Mrs.P.Chitra Nirmala

For the Respondent

: None



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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application is filed by State Bank of India (for brevity 'Applicant/Financial Creditor') through Mr. Hem Chandra, Insolvency Resolution Professional, 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 with a prayer to initiate Corporate Insolvency Resolution Process against Mr. Awaiz Ahamed (hereinafter called as "Respondent /Personal Guarantor").
2. It is stated that an Inter-se Agreement dated 26th April, 2017 was executed between the consortium of Bankers and Scotts Garments Ltd (i.e., Corporate Debtor). The corporate debtor has availed the financial facilities vide its letter No.CB/RM III/SGL/2016-17/2062 (A) and was granted Rs.94.80 Crores and utilised the same for its business purposes as and when needed, however the corporate debtor has defaulted in repayment. So, the accounts of corporate debtor was classified as Non-Performing asset on 18.03.2018.
3. It is also stated that the operational creditor namely M/s. Saravana Distributors had initiated an application under section 9 seeking Corporate Insolvency Resolution Process against Corporate Debtor, numbered as CP (IB) No.66/BB/2018 before this Hon'ble Tribunal which was admitted and imposed moratorium on 13.08.2018 and the consortium of bankers through the lead bank Canara Bank had filed OA before the Debt recovery Tribunal in OA 1218/2019 against the guarantors and the corporate guarantors, the same is pending for adjudication. In CIRP a Resolution Plan was submitted by a Resolution Applicant M/s. Lenin Art Private Limited, and the Hon'ble Tribunal has approved the Resolution Plan vide order dated 16.09.2019. However, the resolution applicant has failed in compliance of the resolution plan. The financial creditor has initiated the separate application against personal guarantors for realisation of its dues. The



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financial creditor had invoked the personal guarantee of the guarantor M.Awaiz Ahmed by issuing guarantee letter dated 07.11.2018 to clear the outstanding liability of corporate debtor. Though the notice was served duly the guarantor not responded for the payment of dues.

4. It is further stated that the financial creditor had issued a demand notice (Form B) on 21.09.2020. However, the guarantor had chosen to refute the claim and issued reply notice on 08.10.2020 to the guarantor to make payment of his liabilities. The financial creditor had suitably replied the said letter of guarantor vide its letter dated 09.11.2020 giving due credits to the payments received including part payment received from resolution applicant. The guarantor is liable to pay a sum of Rs.139,33,06,740 (One Hundred thirty nine crores thirty three lakhs six thousand and seven hundred forty only) as on 31.08.2020, along with future interest and costs. The financial creditor has maintained the accounts of the corporate debtor in the ordinary and usual course of business which reflects all the payments made to the corporate debtor and the repayments received. The guarantor is liable jointly, severally and personally to make payment of the dues of the corporate debtor to the financial creditor. Hence, the present Application.
5. Heard Mrs. P. Chitra Nirmala learned Counsel for the Applicant/Financial Creditor. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made thereunder.
6. This Application has been filed by Mr. Hem Chandra, an insolvency resolution professional, being appointed by the petitioner financial creditor of State Bank of India 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. Awaiz Ahmed the Personal Guarantor of the Corporate Debtor.
7. 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

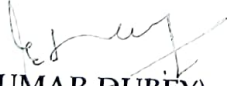


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Guarantor. During the Interim Moratorium period: (i) any legal action or proceedings pending in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect 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.

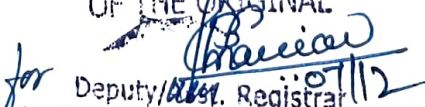
8. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Applicant but also to safeguard the assets of the Personal Guarantor in terms of the provision of the Code. Since, the present Application has been filed by SBI through the Resolution Professional, Mr. 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.
9. 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.
10. 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.
11. List the matter for further proceedings in this case on 17.01.2022.


(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)


(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)



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OF THE ORIGINAL


for Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench