

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.06/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:

M/s. State Bank of India
Stressed Assets Management Branch
2nd Floor, Office Complex Building,
Local Head Office Campus
No.65, St.Marks Road
Bengaluru

... Applicant/Financial Creditor

VERSUS

Mrs.Nuzhat Aisha Nazeer
No.391, 2nd cross,
2nd main, 2nd Stage 80 feet road137,
Bengaluru - 560 058

... 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. Chitra Nirmala
For the Respondent : Mr. G. Sridhar

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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application is filed by M/s. **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 Mrs. **Nuzhat Aisha Nazeer** (hereinafter called as "Respondent /Personal Guarantor").
2. It is stated that an Interse Agreement dated 26th April 2017 was executed between the Consortium of Bankers and Scotts Garments Limited (i.e.,Corporate Debtor) The corporate debtor has availed the financial facilities vide its letter No.CB/RM III/SGL/2016-17/2062 (A) dated 1.03.2017 and was granted Rs.94.80 Crores and has utilised the same for its business purposed as and when needed, however the Corporate Debtor was classified as a 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 the 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 on 23.05.2019 the Consortium of Bankers through its lead Bank Canara Bank had filed on 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.

4. It is stated that the Financial Creditor has initiated a separate application against personal guarantor for realisation of its dues. The Financial Creditor through the Lead Bank had invoked the Personal guarantee of the Guarantor Mrs. Nuzhat Aisha Naseer w/o Mr. Naseer Ahamed by issuing guarantee invocation letter dated 07/11/2018 to clear the outstanding liability of the Corporate Debtor. The notice was served duly, the Guarantor had neither replied nor had made payment towards their dues.
5. Thereafter, the Financial Creditor had issued a Demand Notice under Form B on 21.09.2020. However, the Guarantor had chosen to refute the claim and issued a 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 the Guarantor vide its letter dated 09.11.2020 giving due credits to the payment received including part payments received from the Resolution Applicant. The Guarantor is liable to pay 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. And 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.

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6. Heard Ms. 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.
7. This Application has been filed by Mr. Hem Chandra, an Insolvency Professional being appointed by the Financial Creditor i.e., 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 Mrs. Nuzhat Aisha Nazeer, the Personal Guarantor of the Corporate Debtor.
8. 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.
9. 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 State Bank of India through the Resolution Professional, Mr. Hem Chandra, bearing Registration No.IBBI/IPA-003/IP-N00155/2018-2019/11845, this Bench confirms the appointment of the Resolution Professional in the matter.

10. 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.
11. 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.
12. List the matter for further proceedings in this case on 17/01/2022

— sd —

(M. K. KUMAR DUBEY)
MEMBER (TECHNICAL)

— sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

BHANU PRIYA (LRA)