

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.77/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,
2nd Floor, Office Complex Building,
Local Head Office Campus,
No. 65, St. Marks Road,
Bengaluru – 560 001

... Applicant/Financial Creditor

VERSUS

Mr. S.R Ramprasad

#1930, 30th Cross,
Banashankari 2nd Stage,
Near GK Halli,
Bengaluru -560070

... Respondent/Personal Guarantor

Order delivered on: 02.12.2021

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 : Mr. Amit Anand

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application is filed by State Bank of India, represented by its Assistant General Manager (for brevity

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‘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. S.R Ramprasad **(hereinafter called as “Personal Guarantor/Respondent”)**.

2. It is stated that the Financial Creditor had executed various credit facilities to the Corporate Debtor M/s Sura Leathers Private Limited which was guaranteed by Shri S Ramprasad (Personal Guarantor/Respondent), Shri M.S Sudhindra (demised subsequently), Shri K.L Nagendra, Shri M.S Sriharsha. The Corporate Debtor executed loan documents on 08.09.2006. The facilities were also secured by Hypothecation of Plant and Machinery and mortgage of immovable properties, including the immovable property belonging to Shri M.S Sriharsha. The securities were also guaranteed by M/s. Supreme Overseas Exports India Private Limited, the Corporate Guarantor. Further, the Corporate Debtor vide its Board Resolution dated 12.08.2009 authorised, execution of revival letters in respect of credit facilities not exceeding Rs. 369 Lakhs at any one time. Shri S.R Ramprasad, the Respondent herein and Mr. M.S Sriharsha executed revival letter on 17.08.2009.
3. Further, the Corporate Debtor from time to time sought further enhancement of facilities and the same was approved by the State Bank of Travancore, presently merged with SBI and appropriate guarantee documents were executed. The Corporate Debtor availed the Financial facilities, and utilised the same for its business purposes as and when needed, however defaulted in

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repayment of the facilities availed. The Guarantors including the Respondent herein had guaranteed the amounts owed by the Corporate Debtor. However, both the Corporate Debtor and guarantors failed to adhere to the terms of contracts entered into by them. Hence the account of the Corporate Debtor was classified as a Non-performing Asset on 28.12.2017.

4. On 14.08.2018, for the realization of the debt, enforcement action under SARFAESI Act was initiated by issuance of demand notice u/s 13 (2) of the said Act. However, even after the statutory period of 60 days, the Corporate Debtor and the guarantors including the Respondent guarantor failed to make payment towards satisfaction of their liabilities. Hence the default on payment occurred on 13.10.2018.
5. It is stated that one of the Operational Creditor of the Corporate Debtor namely M/s. Vansun Intermediaries Private Limited has filed an application under Section 9 of the IBC 2016, R/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) seeking Corporate Insolvency Resolution Process against the Corporate Debtor, number as CP (IB) No. 41/BB/2019 before this Hon'ble Tribunal which was admitted on 31.05.2019 and moratorium was imposed. However, the CIRP resulted in failure and an order of liquidation was passed on 25.02.2020 by this Tribunal in I.A No. 113/2020 and the said liquidation proceedings is pending.
6. Further, the Applicant Banker on 20.02.2020 filed Original Application before the Debt Recovery Tribunal in OA No. 481/2020 only against the Guarantors, as the Corporate Debtor Company was under the Corporate Insolvency Resolution Process under I & B Code 2016 and moratorium under Sec. 14 was already in force. The Applicant Bank had invoked the personal guarantee of the

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- Guarantor Mr. S.R Ramprasad, by issuing demand notice letter dated 14.08.2018 calling upon the guarantor to clear the outstanding liability of the Corporate Debtor. Despite notice being served duly, the Guarantor had not made payment towards their dues.
7. On 10.03.2021, the Financial Creditor had issued a demand notice (Form B) calling upon the guarantor to make payment of his liabilities of Rs. 29,50,45,488.69 (Rupees Twenty Nine Crore Fifty Lakhs Forty Five Thousand Four Hundred Eighty Eight and Sixty Nine Paise only) as on 09.03.2021 along with future interest and costs and the same was acknowledged by the Respondent by way of letter dated 24.03.2021 by raising the objections against the demand notice of the Financial Creditor. The said letter dated 24.03.2021 of the Guarantor was duly replied by the Financial Creditor vide its reply dated 29.07.2021. However, the Personal Guarantor did not come forward to settle his liabilities to the Bank.
 8. The Financial Creditor has maintained the accounts of the Corporate Debtor in the ordinary and usual course of business. The accounts reflect all the payments made to the corporate Debtor and the repayments received which are maintained under the Bankers Book of Evidence Act and are duly certified by the competent authority.
 9. 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 29,50,45,488.69/- as on 09.03.2021 along with future interest and costs.
 10. Heard Mrs. Chithra Nirmala, learned Counsel for the Applicant/Financial Creditor and Mr. Amit, Anand Learned

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Counsel for the Respondent/Personal Guarantor. We have heard both the learned counsel and perused the pleadings on record.

11. 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. S.R Ramprasad, the Personal Guarantor of the Corporate Debtor.
12. It is clarified that from the date of filing this Application i.e. 12.08.2021 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.
13. 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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14. 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.
15. 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.
16. List the matter for further proceedings in this case on **20.01.2022**.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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