

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.76/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. M.S. Sriharsha,
#30/31, IIIrd Cross, 7th Block,
K.R Road, Jayanagara,
Bengaluru – 560 082

... Respondent/Personal Guarantor

Order delivered on: 2nd 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 : Mr. Deepak Basawaraj

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 '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. M.S. Sriharsha (**hereinafter called as "Personal Guarantor/Respondent"**).
2. It is stated that the Financial Creditor had extended various credit facilities to the Corporate Debtor M/s. Sura Leathers Private Limited, which were, guaranteed by Shri M.S. Sudhindra (demised subsequently), Shri K.L. Nagendra, Shri S.R. Ramprasad and Shri M.S. Sriharsha ("the Respondent herein"). The corporate Debtor executed loan documents on 08.09.2006 and the facilities were also secured by Hypothecation of plant and machinery and mortgage of immovable properties, including the immovable property belonging to the Respondent herein. The facilities were also guaranteed by M/s. Supreme Overseas Exports India Pvt Ltd., the Corporate Guarantor. Further the Respondent 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 and the same was authorised by Mr. M.S. Sriharsha and Mr. S.R. Ramprasad to execute revival letter on behalf of the Company.
3. Further, time to time the Corporate Debtor sought for further enhancement facilities and the same was approved by the State Bank of Travancore, presently merged with SBI and appropriate guarantee documents were executed by the Respondent. The Corporate Debtor has availed the financial facilities, and utilised the same for its business purposes. The Guarantors including the Respondent had guaranteed the amounts owed by the Corporate Debtor. However, both the Corporate

Debtor and the guarantors failed to adhere to the terms of the contracts entered into by them for availment of facilities from the Financial Creditor. Hence, the account of the Corporate Debtor was classified as a Non-Performing Asset on 28.12.2017.

4. On 14.08.2018, for realization of the debt, enforcement action under SARFAESI ACT was initiated by issuance of demand notice under Section 13(2) of the said Act. However, even after the statutory period of 60 days the Respondent failed to make payment and hence, the default on payment occurred on 13.10.2018.
5. It is further submitted that one of the Operational Creditor of the Corporate Debtor namely M/s. Vansun Intermediaries Pvt Ltd had initiated an application u/s 9 of the IBC, 2016 seeking Corporate Insolvency Resolution Process against the Corporate Debtor, numbered as C.P (IB) No. 41/BB/2019 before this Tribunal which was admitted on 31.05.2019 and moratorium was imposed. However, the CIRP resulted in failure and Liquidation order was passed in I.A No. 113/2020 on 25.02.2020 and the said liquidation proceedings is pending.
6. On 20.02.2020, the Applicant Banker had filed an OA before the Debt Recovery Tribunal in OA 481/2020 only against the Guarantors, as the Corporate Debtor Company was under the CIRP.
7. Consequently, the Financial Creditor has issued a Demand Notice under Form B on 10.03.2021 calling upon the guarantor to make payment of his liabilities, which amounted to 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 interests and costs. On 29.03.2021, the Personal Guarantor raised objection against the Demand Notice of the Financial Creditor and the said objection was duly replied by the Financial Creditor vide its letter dated 29.07.2021. However, the Personal Guarantor did not come forward to settle his liabilities to the Bank.

8. Further, it is submitted that 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. The Accounts 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 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.
10. Heard Mrs. P. Chitra Nirmala, learned Counsel for the Applicant/Financial Creditor and Mr. Deepak Basawaraj, learned Counsel for the Respondent. We have heard the learned counsel for the Applicant 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. M.S Sriharsha, 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

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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, Mr. 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.
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)**

— Sd —

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

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