

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 Insolvency and Bankruptcy
(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 Buildings,
Local Head Office Campus,
No.65, St.Marks Road,
Bengaluru 560 001.

... Applicant/Financial Creditor

Versus

Mr. M.S. Sriharsha
S/o. Late Sri. Sudhindra
#30/31, IIIrd Cross,
7th Block, KR Road,
Jayanagara,
Bengaluru 560 082.

... Respondent/Personal Guarantor

Order delivered on: 29th March, 2022

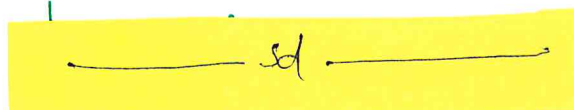
- Coram:**
1. Hon'ble Shri. Ajay Kumar Vatsavayi, Member (Judicial)
 2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant/Financial Creditor : Smt. P. Chitra Nirmala, Adv.

For the Respondent : Shri. Prathap K., Adv.

CP (IB) No. 76/BB/2021



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 Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 with a prayer to initiate Insolvency Resolution Process against Mr. M.S. Sriharsha (hereinafter called as "**Respondent / Personal Guarantor**") who is the Personal Guarantor for the credit facilities extended by the Applicant, State Bank of India, to the Corporate Debtor, M/s. Sura Leathers Private Limited (hereinafter called as '**Corporate Debtor**').
2. It is stated that the Financial Creditor had executed various credit facilities in favour of the Corporate Debtor for which the Respondent stood as the Personal Guarantor. However the Corporate Debtor failed to repay the credit facilities extended by the Applicant for which the Corporate Debtor was classified as Non-Performing Asset on 28.12.2017. It is further stated that, the Operational Creditor of the Corporate Debtor namely M/s Vansun Intermediaries Pvt. Ltd. had initiated an application under Section 9 of IBC, 2016 r/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking Corporate Insolvency Resolution Process against the Corporate Debtor, numbered as CP (IB) No.41/BB/2019 which was admitted on 31.05.2019 and moratorium was imposed by this Tribunal. It is further submitted that Corporate Insolvency Resolution Process resulted in failure and liquidation was ordered by this Tribunal on 25.02.2020 and it is submitted that the said liquidation process is pending.
3. The Applicant Bank by issuing Demand Notice dated 14.08.2018 invoked the personal guarantee of the Guarantor, calling upon the guarantor to clear the outstanding

liability of the Corporate Debtor. On 10.03.2021, the Financial Creditor had issued a demand notice (Form B) calling upon the guarantor to make payment of his liabilities 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. However, the Personal Guarantor did not come forward to settle his liabilities to the Bank.

4. On presentation of the Application by the Financial Creditor, under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, for initiating Insolvency Resolution Process against the Personal Guarantor, this Tribunal vide order dated 02nd December, 2021 has appointed the Resolution Professional viz., Mr. Hem Chandra, Registration No. IBBI/IPA-003/IP-N00155/2018-2019/11845, and directed him to file report under section 99 of Insolvency and Bankruptcy Code, 2016. The Resolution Professional had filed his report dated 10-12-2021 vide Diary No 3516 recommending admission of the application filed under section 95 of IBC, 2016. The grounds for admission of the application recorded in the report are as follows:-

- (i) The Personal Guarantor had committed default in repayment of his debts.
- (ii) The debt is registered with an Information Utility, i.e. National E-Governance Service Limited (NESL)
- (iii) The RP submits that the present application satisfies the requirements of provisions of section 95 of the Code.
- (iv) The RP submits that based on his examination the present application deserves to be admitted under section 100 of the Code.
- (v) The RP submits that considering the facts of the case and the debtor/ personal guarantor does not satisfy the requirement under section 80(2) and hence is not eligible for a "fresh start" under Chapter II.
- (vi) The RP submits that the report is presented to this Tribunal with a recommendation of accepting the present application as the Personal Guarantor has not repaid the debt due to the Creditor.

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5. From the report of the Resolution Professional there does not appear any request for issuance of any direction for the purpose of conducting negotiations between the Financial Creditor and the Personal Guarantor for arriving at the repayment plan.
6. On 22.03.2022, the Hon'ble Tribunal observed that on 20.01.2022, the Tribunal has granted three weeks' time to the Personal Guarantor for filing his reply, if any, for the report of the RP, failing which, his right to file a reply stands forfeited. In spite of the above order, the Respondent has not chosen to file reply and in the result his right for filing the reply is forfeited.
7. Heard the learned Counsel appearing for the RP and learned Counsel for the Respondent and pursued the entire case records/documents and have gone through the report dated 10.12.2021 filed by the Resolution Professional.
8. Hence, based on the reasons recorded in the report submitted by the Resolution Professional, the application i.e., CP (IB) No.76/BB/2021 filed under Section 95 of IBC, 2016 is hereby admitted under Section 100 of the IBC, 2016. The Insolvency Resolution Process is initiated against the Respondent/ Personal Guarantor and moratorium is declared in place of interim moratorium, which begins with the date of admission of the application and shall cease to have effect at the end of the period of 180 days, as provided under Sec 101 of IBC, 2016.
9. During the moratorium period;
 - (i) Any pending legal action or proceeding 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; and
 - (iii) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;

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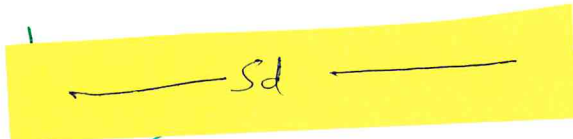
(iv) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

10. The Resolution Professional viz., Mr. Hem Chandra, who has been appointed under section 97 vide Order dated 02.12.2021, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of uploading of this Order on the website of the NCLT, Bengaluru inviting claims from all Creditors, who shall register their claims as provided under Section 103 within 21 days of such issuance. The notice shall contain the necessary information as provided under Section 102(2) of IBC, 2016. The publication of notice shall be made in newspaper, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two copies of the notice to the Registry.
11. The Resolution Professional in exercise of the powers conferred under Section 104 of IBC, 2016 shall prepare a list of creditors within 30 days from the date of notice. The debtor shall prepare a repayment plan in consultation with the Resolution Professional as provided under Section 105 of IBC, 2016 which shall include provisions for payment of fee to the Resolution Professional. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106 of IBC, 2016.
12. In case the Resolution Professional recommend that a meeting of the creditors is not required to be summoned, he shall record the reasons therefor. If the Resolution Professional is of the opinion that the meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of the IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section 106 of IBC, 2016 for which at least 14 days' notice to the creditors [as per the list prepared] shall be issued by all

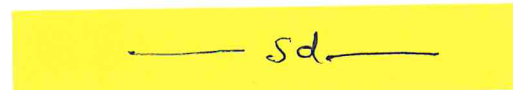
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modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

13. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit to this Authority, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of the IBC, 2016.
14. In terms of the above, CP (IB) No. 76/BB/2021 filed under section 95 (1) of the IBC, 2016 is admitted and the Insolvency Resolution Process stands initiated against the Respondent/Personal Guarantor.
15. The Resolution Professional shall submit his periodic reports before this Tribunal, as per rules.



MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)



AJAY KUMAR VATSAVAYI
MEMBER (JUDICIAL)

ANJANA S SANTHOSH (LRA)