NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)810(ND)2021

IN THE MATTER OF :

State Bank of India
Stressed Assets Management Branch-I
New Delhi (Branch Code 04109)
12th Floor Jawahar Vyapaar Bhawan
1 Tolstoy Marg, New Delhi-110001

Through Resolution Professional
Sh. Navjit Singh **...Applicant**

Versus

Smt. Anuradha Sachdev
(Personal Guarantor of M/s Auto Decor Pvt. Ltd.)
E-2368, Palam Vihar
Gurgaon-122017 (Haryana) **...Personal Guarantor**

Order Delivered on: 18.04.2022

SECTION: 95(1) of IBC 2016

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Ms. Ekta Choudhary, Advocate

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Under consideration is the Application preferred by SBI **(the 'Applicant/Financial Creditor')**, under Section 95(1) of IBC, 2016 r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019 for initiating Insolvency Resolution Process **(the "IR Process")** against Ms. Anuradha Sachdev (hereinafter, referred to as **Personal Guarantor/Debtor**), who is the Guarantor of M/s Auto Decor Pvt. Ltd. **(the 'Corporate Debtor')**.

2. It is stated by the Applicant/Financial Creditor had provided various Financial facilities to the Corporate Debtor vide sanction letter dated 09.07.2007, which were reviewed/enhanced from time to time as per the details reproduced below :

Date of Sanction Letter	Facilities (Crores) sanctioned and granted
17.12.2008	Rs.23.85 Crores
29.09.2009	Rs.31.41 Crores
06.10.2010	Rs. 38.95 Crores
18.05.2011	Rs.47.77 Crores
03.10.2011	Rs.51.27 Crores
24.03.2012	Rs.54.27 crores

3. It is added by the Applicant that the important dates and events leading to filing of the instant application are as given below :

LIST OF DATES & EVENTS

DATES	EVENTS
09.07.2007	That corporate debtor is the principal borrower who approached financial Creditor for financial assistance. That the financial creditor on the request of the corporate debtor sanctioned credit facilities to the corporate debtor to the extent of Rs.19.65 crores on 09.07.2007. That in order to secure the facility charge was created in respect of assets being:- **Primary :--** • 1stparipassu charge on all fixed assets, including EM of factory land and buildings, except land & building of Manesar Plant (Inclusive of EM 0f 7 & 8 , Phase-1, UdyogVihar, Gurgaon(Haryana) **Collateral :-** • 2nd charge on current assets. • EM of land of new plant at Rudrapur, Uttarakhand, owned by the promoters. **Guarantees :--** • Personal guarantees of ShVivekSachdev and Mrs AnuradhaSachdev. Loan and guarantee documents were executed on 25.07.2007 in accordance to the board resolution of the corporate debtor dated 12.07.2007.
17.12.2008	Thereafter corporate debtor again approached the applicant/Financial creditor for enhancement of the credit facilities. The facility was granted vide Sanction Letter dated 17.12.2008 to the extent of Rs.23.85 crores. That facilities were secured as under:- **Primary :--** • EM/hypothecation charge on all fixed assets, including EM of factory land and buildings, except land & building of Manesar Plant (inclusive of EM 0f 7 & 8 , Phase-1, UdyogVihar, Gurgaon(Haryana)valued at Rs 7.30 crs as per valuation report dated 20.06.2007

	by a Bank-empanelled valuer. The Company would furnish an undertaking not to credit an undertaking not to create any charge on the Manesar Property in favour of the other lenders. **Collateral :-** • Extension of charge on current assets of the Company. **Guarantees :--** • Personal guarantees of ShVivek Sachdev and Mrs Anuradha Sachdev,
29.09.2009	Facility was restructured vide Sanction Letter dated 29.09.2009 for an amount of Rs.31.41 crores. That the facility was secured as under:- **Primary :--** • EM/hypothecation charge on all fixed assets, both present and future, including EM of factory land and buildings, except land & building at Manesar, but inclusive of EM 0f 7 & 8 , Phase-I, UdyogVihar, Gurgaon(Haryana). The Company would furnish an undertaking not to credit an undertaking not to create any charge on the Manesar Property in favour of the other lenders. **Collateral :-** • Extension of charge on current assets of the Company. • EM of Industrial land at 18-19,Mini Industrial Estate,Kichha, Rudrapur(Uttarakhand), standing in the name of directors and Factory building

	erected thereon. • EM of Industrial at Land 16-17, Mini Industrial Estate, Kichha, Rudrapur standing in the name of Auto Décor (partnership concern) and Factory building erected thereon. • EM of Industrial at 20-21, Mini Industrial Estate, Kichha, Rudrapur proposed to be purchased in name of directors (and leased to the Company) and Factory building to be erected thereon. **Guarantees :-** Personal guarantees of • ShVivekSachdev S/o Late Sh. Prithvi Raj Sachdev • Mrs Anuradha Sachdev W/o Sh.Vivek Sachdev. • Corporate Guarantee of M/s Auto Décor, a partnership concern.
06.10.2010	The Overall Limit was enhanced from Rs.31.41 to crores toRs.38.95 crores vide sanction letter dated 06.10.2010.
18.05.2011	Further Facilities were enhanced from Rs. 38.95 to crores to Rs.47.77 crores vide sanction letter dated 18.05.2011.
03.10.2011	Again at the request of corporate Debtor the Overall Limit was enhanced from Rs. 47.77 crores to Rs.51.27 crores vide sanction letter dated 03.10.2011.
24.03.2012	The facilities were further enhanced from Rs.51.27 to crores to Rs.54.27 crores vide sanction letter dated 24.03.2012.

10.11.2012	That the assets band liability disclosed by the guarantor through affidavit. Copy of Opinion report dated 10.11.2012 is appended as **Annexure A1.** Copy of affidavit of Guarantor/Mrs. Anuradha Sachdev dated 16.11.2012 is appended as **Annexure A2.**
10.01.2013	That the Applicant sanctioned SLC of Rs.02.00 crores vide arrangement letter dated 10.01.2013.
15.03.2014	That at the request of the corporate Debtor SLC was converted into WCTL of Rs.02.00 Crores vide arrangement letter dated 15.03.2014 to the extent of Rs. 49.67 Crores.
31.03.2014	Account was classified as NPA
06.04.2015	That at the request of the corporate debtor the overall facility was enhanced from Rs.49.67 to crores to Rs.51.17 crores vide sanction letter dated 06.04.2015. Nature of facilities were :- A. Cash credit: Rs.21 Crores B. Letters of Credit: Rs.6 Crores C. Bank Guarantees: Rs.0.50 Crores (Sub-limit of LC limit Purpose: For financial / Performance guarantees to various authorities and other bonafide commercial purposes D. Term Loan/Corporate Loan: a. TL-I: Rs. 3 Crores b. TL-II: Rs.4 Crores c. TL-III: Rs.10.67 Crores d. CL: Rs.3 Crores Purpose: E. WCTL: Rs.2 Crores

Purpose: Conversion from SLC to WCTL

F. Ad hoc limit: Rs.1.50 Crores

Purpose: To manage temporary cash flow mismatch

That the security against the above loan was under:--

Primary :--

First charge on the entire current assets, both present and future, of the Company, including stocks of raw material, SIP, book debts and other current assets.

Collateral :-

(i) Extension of 1st charge on all fixed assets of the (for TLs) Company including EM on Plot no. 469-471, Sector 8, IMT Manesar, Haryana measuring 3037.50 sq. mtrs.

(ii) Extension of our Exclusive charge (shared with our TLs /CL) by way of EM on Plot No. 7&8, Phase-I, UdyogVihar,Gurgaon.

(iii) Extension of 1st charge(for TLs) on property situated at Industrial land at 16-21, Mini Industrial Estate, Kichha, Rudrapur(Uttarakhand) measuring 1122 sq. mtrs. standing in the name of directors and Factory building erected thereon.

Guarantees :--

Personal guarantee of

- ShVivekSachdev
- Mrs AnuradhaSachdev
- Corporate Guarantee of M/s Asian Décor,

	a partnership concern. Loan & Security Documents were executed in pursuance to Board Resolution dated 06.04.2015. Copy of Board Resolution dated 06.04.2015 is appended and marked as **Annexure A3.**Copy of renewal of working capital facilities dated 06.04.2015 is appended and marked as **Annexure A4.**
06.04.2015	Loan & Security documents duly executed to secure the liability relevant for the instant application is as under:- 1. Letter of Agreement for fresh documents dated 06.04.2015 is appended and marked as **Annexure A 5.** 2. Agreement of Loan for Overall Limit (Form C.1) dated 06.04.2015 for Overall Limit of Rs. 51.17 croresis appended and marked as **Annexure A 6.** 3. Agreement for Hypothecation of Goods and Assets (Form C.2) dated 06.04.2015 for Overall Limit of Rs. 51.17 croresis appended and marked as **Annexure A7.** 4. Deed of Guarantee (Form C.4) dated 06.04.2015 for Overall Limit of Rs. 51.17croresis appended and marked as **Annexure A 8.** 5. Letter Regarding Grant of Individual Limits within the Overall Limit (Form C.5) dated 06.04.2015 for an Overall Limit of Rs. 51.17croresis appended and marked as **Annexure A9.**

	6. Revival letter (Form C.6) dated 06.04.2015 in favour of the Applicant Bank is appended and marked as **Annexure A10.**
04.10.2016	Notice u/s 13(2) SARFAESI was issued against the corporate debtor and guarantors. Copy of 13(2) SARFAESI Notice is appended and marked as **Annexure A11.**
03/01/2017	Date of default
2017	Original Application being OA no. 159 of 2017, Case titled as The State Bank of India vs M/s Auto Décor Pvt. Ltd. &Ors.filed in DRT-II, Delhi. Copy of orders passed in OA is appended and marked as **Annexure A12.**
07.03.2018	Compromise Proposal vide letter reference no SAMB/17-18/CL-1/1447 dated 07.03.2018 was sanctioned for Rs. 16.5 crores wherein the payment was to be made by 31.03.2018. The said sanction lapsed and the deposit amount was forfeited.
17.05.2018	The corporate debtor requested for revival of compromise proposal. Copy of letter dated 17.05.2018 is appended and marked as **Annexure A 13**
02.08.2018	The Corporate Insolvency Resolution application under section 9 of IBC bearing case no. IB/530(ND/2018 titled as M/s APPL Industries Ltd. Versus M/s Auto Décor Pvt. Ltd. Was admitted by the Hon'ble, NCLT, New Delhi. Copy of order dated 02.08.2018 is appended as **Annexure A14.**

04.06.2019	That the RP filed an application U/s 33 & 34 of IBC praying for an order of liquidation of assets of the Corporate Debtor. The Hon'ble NCLT, New Delhi was pleased to appoint Mr. Sanjeev Gupta as a liquidator for the assets of corporate debtor vide order dated 04.06.2019. Copy of Order dated 04.06.2019 passed by Hon'bleNCLT, New Delhi for appointment of liquidator is appended as **Annexure A15.**
08.07.2021	Demand Notice dated 08.07.2021 under Form B Rule 7(1) was duly served for the amount of outstanding debt being Rs.**72,90,64,845.33** (Rs Seventy Two crore Ninety lacs Sixty Four thousand Eight hundred forty five paise Thirty Three only)(As on 30.06.2021). Copy of Demand notice dated 08.07.2021 under Form B Rule 7(1) along with postal receipt is appended and marked as **Annexure A16.** Copy of CIBIL of the Anuradha Sachdev /Guarantor is appended and marked as **Annexure A17.** Detail calculation of the amount outstanding is appended and marked as **Annexure A18.** Statement of account of the corporate debtor alongwith section 2(a)b certificate is appended and marked as **Annexure A19(Colly).**
_____.10.2021	The present application is filed within the period of Limitation through its duly constituted attorney Mr. Navjit Singh. Copy of letter of authority is appended and marked as **Annexure A20.**

4. That the Applicant has provided details of the transactions in Part III of its Application, pursuant to which it had claimed a total debt of Rs.72,90,64,845.33/-. The relevant extract of Part III of the Application is reproduced below :

Part III

PARTICULARS OF DEBT		
1.	Total debt (including any interest or penalties)	The total outstanding debt due is Rs.72,90,64,845.33/- (Rupees Seventy Two Crores Ninety Lakhs sixty four thousand eight hundred and forty five and thirty three paise only) due as on 30.06.2021
2.	Amount in default	Rs.72,90,64,845.33 (Rs Seventy Two crore Ninety lacs Sixty Four thousand Eight hundred forty five paise Thirty Three only)As on 30.06.2021)
3.	Date on which debt was due	04.10.2016
4.	Date on which default occurred	03.01.2017 the corporate debtor failed to pay the debt despite notice Subsequently the original application for recovery of outstanding amount was filed against the corporate debtor as well as guarantor in 2017

5. That the Applicant has submitted that the facilities sanctioned and granted were secured by way of Personal Guarantee of the Debtor/Shri Anuradha Sachdev by virtue of the execution of the Deed of Guarantee dated 09.07.2007, 17.12.2008, 29.09.2009, 06.10.2010, 18.05.2011, 03.10.2011, 24.03.2012, 10.01.2013, and 06.04.2015. The Guarantor is thus jointly and severally liable for the dues of the Corporate Debtor. However, on perusal of the record, it is seen that the Applicant has placed the copy of the Guarantee Deed dated 06.04.2015, executed by the Personal Guarantor herein, in favour of the Applicant.

6. It is submitted by the Applicant that it had invoked the Guarantee vide its notice dated 04.10.2016, which was issued to the Corporate Debtor, as well as to the Personal Guarantor herein, under Section 13(2) of SARFAESI Act 2002. The same is reproduced below :

SAMB/2015-16/CL-I/ 125
Date: 04-10- 2016

To,

M/s Auto Décor Pvt. Ltd Flat No 226,C-7 Navneet, Niketan, Green Park Extension, New Delhi-110016	M/s Auto Décor Pvt Ltd, 7 &8, Phase – 1, Udyog Vihar, Gurgaon Haryana.
M/s Auto Décor Pvt. Ltd. 91, Sector-3 IMT Manesar, Gurgaon Haryana.	M/s Auto Décor Pvt. Ltd. Plot No. 469-471, Sector- 8 IMT Manesar,Gurgaon, Haryana
M/s Auto Décor Pvt. Ltd 16-21, Mini Industrial Estate, Kichha, Rudrapur, Uttrakhand	

SPEED POST- AD/ COURIER WITH POD/ACK. DUE

Dear Sir,

SUB: NOTICE U/S 13 (2) OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (No. 54 OF 2002) (HEREINAFTER CALLED "THE ACT")

At your request, you have been granted by the Bank, through its Industrial Finance Branch, 14th-15th Floor, Jawahar Vyapar Bhawan, 1, Tolstoy Marg, New Delhi-110001, from time to time, various credit facilities by way of financial assistance against various assets creating security interest in favour of the Bank. The relevant particulars of the said credit facilities and the security agreement(s) / document(s) executed by you are stated in Schedule "A" and "B" respectively excluding pledge of movables. You have availed the financial assistance with an undertaking for repayment of the said financial assistance in terms of the said agreement(s) / document(s).

You have also created mortgage by way of deposit of title deeds creating security interest in favour of the Bank. The documents relating to creation of such mortgage(s) are also stated in schedule 'B'.

NAVNIT SINGH IP-P00314/2017-18/10579 Insolvency Professional

Page 1

The relevant particulars of the secured assets are specifically stated in Schedule 'C'.

You have also acknowledged subsistence of the liability in respect of the aforesaid credit facilities by executing confirmation of balances and revival letters and other documents from time to time. The operation and conduct of the above-said financial assistance / credit facilities have become irregular and the debt has been classified as non-performing asset on 31.03.2014 in accordance with the directives / guidelines relating to asset classifications issued by the Reserve Bank of India consequent to the default committed by you in repayment of principal debt and interest thereon.

The said financial assistance is also secured by the personal guarantee(s) of:

1) Sh. Vivek Sachdev, Guarantor E-2368, Palam Vihar, Gurgaon 122017 Haryana.
2) Ms. Anuradha Sachdev, Guarantor E-2368, Palam Vihar, Gurgaon - 122017.
3) M/s Auto Décor(Partnership firm & Guarantor)Through shri Vivek Sachdev and Smt. Anuradha Sachdev (Partners)E- 2368, Palam Vihar, Gurgaon – 122017 Haryana.

The said financial assistance is also secured by the Equitable Mortgage and deposit of title deeds by -

1) EM on Plot No. 469 – 471, Sector – 8, IMT Manesar, registered in name of the company.
2) EM of Plot No. 7 & 8, Phase – I, Udyog Vihar, Gurgaon), registered in name of company.
3) EM of Industrial land at 16-21, Mini Ind. Est.,Kichha, Dist. Udham Singh Nagar (Uttarakhand) measuring 1122 sq. mtrs., registered in name of company.

Despite repeated requests, you have failed and neglected to repay the said dues / outstanding liabilities.

Therefore, the Bank hereby calls upon you u/s 13(2) of the said Act by issuing this notice to discharge in full your liabilities stated hereunder to the Bank within 60 days from the date of this notice. Your outstanding liabilities (in aggregate) due and owing to the Bank is the sum of Rs.378314335.31/- (Rupees Thirty Seven crores eighty three lacs fourteen thousand three hundred thirty five & paise thirty one only), (inclusive of interest up to 31.03.2014). You are also liable to pay future interest w.e.f.01.04.2014 at the contractual rate on the aforesaid amount together with incidental expenses, costs, charges, etc.

If you fail to repay the Bank the aforesaid sum of Rs.378314335.31/- (Rupees Thirty Seven crores eighty three lacs fourteen thousand three hundred thirty five & paise thirty one only),. (inclusive of interest up to 31.03.2014) and also future interest w.e.f. 01.04.2014 at contractual rate and incidental expenses, costs charges etc. as stated above in terms of this notice u/s 13(2) of the Act, the Bank will exercise all or any of the rights detailed under Sub-Section (4) of the Section 13 and under other applicable provisions of the said Act.

You are also put on notice in terms of sub-section 13 of Section 13 of the Act that you shall not transfer by sale, lease or otherwise said secured assets detailed in Schedule 'C' of this notice without obtaining prior written consent of the Bank.

The Bank reserves its rights to call upon you to repay the liabilities that may arise under the outstanding bills discounted, Bank Guarantees and Letters of Credit issued and established on your behalf as well as other contingent liabilities.

This notice is without prejudice to the bank's rights and contentions to initiate such other actions or legal proceedings, as it deems necessary under any other applicable provisions of law.

Yours faithfully,

AUTHORISED OFFICER
State Bank of India

Copy forwarded to:

1) Sh. Vivek Sachdev, Guarantor E-2368, Palam Vihar, Gurgaon 122017 Haryana.
2) Ms. Anuradha Sachdev, Guarantor E-2368, Palam Vihar, Gurgaon - 122017.
3) M/s Auto Décor(Partnership firm & Guarantor)Through shri Vivek Sachdev and Smt. Anuradha Sachdev (Partners)E- 2368, Palam Vihar, Gurgaon – 122017 Haryana.

AUTHORISED OFFICER
State Bank of India

7. It is averred by the Applicant that the Liquidation process against the Corporate Debtor has already been initiated by this Adjudicating Authority vide order 04.06.2019 in the matter of Appl Industries Limited Vs Auto Decor Pvt. Ltd. (CP. No. 530/ND/2018).

8. It is further averred by the Applicant that it had sent a Notice by the Speed Post on 08.07.2021 in Form B under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor demanding payment of total outstanding amount of Rs.72,90,64,845.33/-.

9. That the Applicant has placed on record the copy of the tracking report reflecting that the demand notice was duly served upon the Personal Guarantor on 19.07.2021.

10. That the Applicant has also served the copy of this Application to the Personal Guarantor vide email dated 20.10.2021 in compliance of Section 95(5) of IBC, 2016.

11. It is submitted by the Applicant that the Personal Guarantor/Debtor has committed default in making repayment of the loan along with the interest to the Applicant.

12. That vide order dated 05.01.2022, this Adjudicating Authority had issued notice to the personal Guarantor, pursuant to which Ld. Counsel for the Personal Guarantor had appeared on 21.02.2022 and raised a preliminary objection that the Petition is not signed by the Authorised

Representative of the SBI. After hearing the parties, this Bench had directed them to file their Written Submissions.

13. In its written submissions filed on the DMS, the applicant has stated that the Application has been filed through Resolution Professional in accordance with the provisions of Section 95(1) of IBC, 2016, which categorically states that "*A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.*"

14. It is further stated by the Applicant that he is duly authorised by the SBI to file this Application. That the Applicant has annexed the email dated 02.09.2021 written by Sh. Rakesh Verma, Assistant General Manager SBI, duly authorizing the Applicant to file the present Application.

15. In addition to this, the Applicant has annexed the Form 'A' i.e., its consent form to act as RP.

16. As with regards to the objection raised by the Personal Guarantor, this Bench is of the view that since the present Application has been filed through a Resolution Professional duly authorised by the Applicant Bank, it does not make difference if the Application is not signed by the Authorised Representative of the Bank.

17. In the given circumstances, we would like to proceed further in the matter with the appointment of Resolution Professional. Hence, it is made known to everyone that on filing of this Application by the Applicant/

Creditor, the interim-moratorium commences as stipulated under Section 96 (1) (a) in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application. During the interim- moratorium period, the following are prohibited:

(a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and

(b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

This shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

18. The Applicant/Financial Creditor has proposed the name of Mr. Navjit Singh, Insolvency Professional for appointment as Resolution Professional, who has given his consent and declared that he is eligible to be appointed as there are no disciplinary proceedings pending against him. **Since the present application is filed by the Applicant through the abovenamed Resolution Professional, we, in exercise of the powers conferred under Section 97(1) of the IBC, 2016, direct the IBBI to confirm whether that there is no disciplinary proceeding pending against Mr. Navjit Singh, the RP proposed herein, within seven days.**

19. The Registry as well as the Applicant are directed to send a copy of this Order to the IBBI for needful action.

20. List the matter on 29.04.2022.

(L. N. Gupta)
Member (T)

(Abni Ranjan Kumar Sinha)
Member (J)