NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

112. C.P. (IB)/390(MB)2024

IN THE MATTER OF

Central Bank Of India … Petitioner

Vs

Sameer Subhash Gujar … Respondent

U/s 95(1) of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 24.10.2024

CORAM:

MS. REETA KOHLI, MEMBER (J)

MS. MADHU SINHA, MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Adv. Ruchita Jain (VC)

For the Respondent:

ORDER

1. The above Company Petition is filed by Central Bank of India, for initiation of Corporate Insolvency Resolution Process against Mr. Sameer Subhash Gujjar, who is the Personal Guarantor of the Corporate Debtor M/s. Opal Luxury Time Products Ltd.

2. Learned counsel appearing for the Petitioner has invited the attention of this Bench to the Deed of Guarantee dated 29.03.2012 executed by and between the Petitioner and the Personal Guarantor. The Ld. Counsel for the Petitioner has also invited the attention to the invocation of Deed of Personal Guarantee dated 25.09.2019 by the Financial Creditor by way of demand notice in respect of unpaid debt in default due from M/s. Opal Luxury Time Products Ltd. It is submitted that as per the Demand Notice, the debt was to be paid within 10 days from the date of the Demand Notice. Thus, the date on which the default occurred on the part of the Personal Guarantor is 04.10.2019 i.e. 10 days from 25.09.2019.

3. In terms of the Limitation Act, the date of default actually was to expire on 04.10.2022 but for the exclusion/extension having been granted by the Hon'ble Supreme Court suo-moto on account of Covid-19 has further extended the limitation for the Petitioner/Financial Creditor. The Financial Creditor has also brought to our attention the latest judgment of the Hon'ble Supreme Court *(2024) 5 Supreme Court Cases 313 Arif Azim Company Limited Vs. Aptech Limited* wherein the Hon'ble Supreme Court has been pleased to hold that the period of limitation was available on 15.03.2020 has now become available from 01.03.20022. In view of the same, the case of the Petitioner is well within the limitation.

4. The Hon'ble Supreme Court in ***Dilip B Jiwrajka Vs. Union of India & Ors. Writ Petition (Civil) No. 1281 of 2021*** decided on 09.11.2023 held as follows:

   "i. No judicial adjudication is involved at the stages envisaged in Section 95 to Section 99 of the IBC;

   ii. The Resolution Professional appointed under Section 97 serves a facilitative role of collating all the facts relevant to the examination of the application for the commencement of the insolvency resolution process which has been preferred under Section 94 or Section 95. The report to be submitted to the Adjudicating Authority is recommendatory in nature on whether to accept or reject the application."

5. The petition for initiating insolvency resolution process against Personal Guarantor to the Corporate Debtor is complete in all respect.

6. Having considered the submissions and upon perusing the above documents, this Bench is of the considered view that the present Company Petition is complete in all aspects as required by law and thus hereby appoints **Mr. Rakesh Kumar**, having Insolvency Registration No. **IBBI/IPA-001/IP-P-02355/2020-2021/13448**, Email Id: rkattorney@gmail.com to act as the Resolution Professional.

7. The fee payable to Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/Circulars/Directions issued in this regard.

8. This Bench also directs for an advance payment to the tune of Rs. 1,00,000/- to be paid by the Financial Creditor to the Resolution Professional immediately to initiate the process which shall be adjusted towards the expenses payable to the Resolution Professional. The fee may be decided by the Petitioner/FC.

9. The interim-moratorium under Section 96(1) (a) of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of this application by the Financial Creditor and will cease to have effect on the date of admission.

10. During such interim-moratorium period –

    i. **any legal action or proceeding 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.**

11. The Resolution Professional is directed to examine the application as set out in Section 97(6) of IBC, 2016 who after examining, shall submit his report as provided under Section 99(1) of IBC, 2016 within 10 days.

12. Registry is directed to communicate this order immediately to the Resolution Professional and place the said communication on record.

13. Accordingly, stand over to **16.12.2024** for submission of the report by the Resolution Professional.

Sd/-
MADHU SINHA
Member(Technical)

Sd/-
REETA KOHLI
Member(Judicial)

/Ziyaul/