

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 25/CB/2021

*Under section 95(1) of the Insolvency and Bankruptcy Code, 2016
read with rule 7(2) of the Insolvency and Bankruptcy (Application to
Adjudicating Authority for Insolvency Resolution Process for
Personal Guarantors to Corporate Debtor) Rules, 2019*

In the matter of:

State Bank of India

... Petitioner

Versus

Md. Javed Sultan

... Respondent

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For the Applicant :

For the Respondent : Mr. Mitalee Jesthi
Mr. Chandan Mohanty

Order Reserved on: 30.08.2021

Order Pronounced on: 21.09.2021

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. The Court convened *via* video conference.
2. Under consideration is an Application CP (IB) No.25/CB/2021 filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016”) read with rule 7(2) of the Insolvency and

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In re: State Bank of India Vs. Md. Javed Sultan

Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 (hereinafter referred to as “**IB Rules, 2019**”) and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (hereinafter referred to as “**IB Regulations, 2019**”) for initiating the Insolvency Resolution Process (hereinafter referred to as “**IR Process**”) against personal guarantor, viz., MD. Majeed Sultan, one of the directors of Emerald Mineral Exim Private Limited (CIN:U51920OR2004PTC007714) (hereinafter referred to as “**EME**”).

3. The factual matrix of the case is that the Applicant Financial Creditor is a Banking Company. The principal borrower company, i.e., Emerald Mineral Exim Private Limited requested the applicant for sanction of credit limits and on being so approached the Financial Creditor. At the request of EME the Financial Creditor sanctioned to the said company an overall limit of ₹11 crore by sanction letter dated 19.02.2008 on the terms and conditions as mentioned in the sanction letter. Thereafter, on number of times on request of the said principal borrower company, the Financial Creditor has enhanced several times the cash credit to the principal borrower company on different dates. Finally, on the request of the Borrower Company the said loan was enhanced to ₹30.74 crore *vide* sanction letter dated 28.12.2010. The said company along with its guarantors accepted the terms and conditions of the said sanction letter by putting their endorsement on the office copy of the sanction letter. Copy of the aforesaid letters have been attached to the application and marked as Annexure ‘1-D’.
4. To secure the overall limit sanctioned as enhanced by the Financial Creditor from time to time to the principal borrower company, the guarantor herein has executed the guarantee documents to secure the said limits including the enhancement thereof, as security for due re-payment of the loans and advancement guaranteed to the principal borrower company along with the

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interest costs and expenses. The EME and the guarantor had failed and/or neglected to make payment as per terms of the said Facility Agreements. Thereafter, the applicant had classified the account of the EME (Corporate Debtor) as a non-performing asset.

5. The Financial Creditor has filed an application being OA No.720/2014 under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before the Debts Recovery Tribunal-III, Kolkata. However, the applicant failed to realise its dues. Meanwhile, EME (Corporate Debtor) was admitted under CIRP by the National Company Law Tribunal, Cuttack Bench *vide* order dated 20.02.2020 passed in **TP No.182/CTB/2019 (Dhanlaxmi Bank Limited Vs. Emerald Mineral Exim Private Limited)**.
6. The personal guarantor, viz., Md. Javed Sultan, has executed personal guarantees on 18.01.2011 and 24.07.2013 in favour of the Applicant to secure the repayment of the principal amount of the Facility Agreements together with all interest, additional interest, liquidated damages, premium on prepayments, reimbursement of all costs, charges and expenses and all other obligations payable by EME in terms of the Facility Agreements.
7. The Applicant has issued a demand notice on 22.06.2020 under rule 7(1) of the IB Rules, 2019 wherein requesting the Guarantor unconditionally to pay the unpaid debt in default being a sum of ₹74,09,97,965.73 inclusive of interest calculated up to 29.02.2020, together with further interest at the contractual rate from 29.02.2020 with monthly rests till realisation. A copy of the Demand Notice along with its postal receipts have been annexed with the petition and marked as Annexure '1-R'.
8. In this factual conspectus, the applicant prays for initiation of insolvency resolution process.

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9. The applicant has clearly brought it out in its application coupled with admissible evidence that the personal guarantor has committed default in making payment of the cash credit facility along with interest to the Applicant for which he has given the personal guarantee to the Applicant on behalf of EME.

10. It is made known to everyone that on filing of this Application by the Applicant/Creditor the interim-moratorium commences under section 96(1)(a) of IBC, 2016 in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim-moratorium period the following is 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.
- (c) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

11. The Applicant/Creditor has proposed the name of Mr. Surya Kanta Satapathy for appointment as Resolution Professional. Therefore, as proposed by the Financial Creditor, Mr. Surya Kanta Satapathy [E-mail: suryakantasatapathy@yahoo.co.in], having his address at MMS Chamber, Room No.I2, 4A, Council House Street, Kolkata, West Bengal 700001, having Reg. No.IBBI/IPA-001IP-P00598/2017-18/11050, and AFA Certificate No.AA1/11050/02/091221/101731, valid till 09 December 2021, is hereby appointed as Resolution Professional, in exercise of the powers conferred on this Adjudicating Authority under section 97 of the IBC, 2016 read with regulation 4(1) and (2) of the Insolvency and

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Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. He has duly filed his declaration in Part IV.

12. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 w/w the Rules made thereunder. He is directed to make recommendations with reasons in writing for acceptance or rejection of this Application within stipulated time as envisaged under the provisions of section 99 of the IBC, 2016. The RP shall give a copy of the report under sub-section (7) of section 99 of IBC, 2016 to the Applicant/Creditor, as soon as the same is filed before this Adjudicating Authority.
13. The Applicant/Creditor and its Counsel are hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.
14. List this matter on 09.11.2021.
15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
16. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

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Satya Ranjan Prasad
Member (Technical)

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Rajasekhar V.K.
Member (Judicial)

Signed this 21st day of September, 2021

Ravijeet_P.S.