IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH, NEW DELHI

CP (IB)/948/(PB)/2020
IA(I.B.C)/436/PB/2021

In the matter of:

STATE BANK OF INDIA

through

Sh. Anil Kohli, Resolution Professional

Proposed by State Bank Of India

Having Registration Number:

IBBI/IPA-001/IP-P00112/2017-18/10219

Having Registered Office At:

409, 4th Floor, Ansal Bhawan

16, K.G. Marg, New Delhi-110001

...APPLICANT/CREDITOR

VERSUS

SAMEER AHMAD KHAN

S/o Sh. Waseem Ahmad Khan

118-119, Lajpat Nagar

Moradabad-244001

(Personal Guarantor of **M/s Multiwal Pulp &**

Board Mills Private Limited

Premise No. 126, DLF Tower A,

DDA District Center, Jasola New Delhi-110044)

...RESPONDENT/GUARANTOR

UNDER SECTION 95 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 DEBTORS), RULES, 2019

CORAM:

SHRI DHARMINDER SINGH, MEMBER (J)

SHRI AVINASH K. SRIVASTAVA, MEMBER (T)

PRESENT:

For Applicant : Mr. Abhishek Anand, Mr. Mohak Sharma, Advs (For RP)

For Respondent :

ORDER (delivered on 6 April 2022)

PER SH. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an application filed by **'State Bank of India'** under Section 95 read with Rule 7(2) of the IBC (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019. (the Rules, 2019). The prayer is to initiate the Insolvency Resolution Process against the Respondent/Guarantor Mr. Sameer Ahmad Khan and 4 others who stood as Personal Guarantors to the loan facility availed by the Corporate Debtor namely **M/s. Multiwal Pulp and Board Mills Pvt. Ltd.** against which Resolution Plan has already been approved by the CoC.

2. On presentation of the application by the Applicant/Creditor, this Tribunal vide order dated 06.01.2021, has appointed the Resolution Professional **Mr. Anil Kohli**, to file report under section 99 of the Code, which has been filed by him through **IA (I.B.C)/436/PB/2021** filed in **CP (IB)/948/PB/2020** recommending the admission of the application filed under Section 95 of the Code on grounds explained in the report dated **23.01.2021.**

3. As per the Report dated **23.01.2021** submitted by the Applicant submits that:

- Corporate Debtor failed to adhere to financial discipline and remained irregular in conduct of the loan facilities taken by it despite several requests and reminders.
- SBI, the Financial Creditor/ Applicant was forced to send a Legal Demand Notice dated **07.08.2015** to Corporate Debtor and the Guarantors including Mr. Sameer Ahmad Khan calling upon them to repay the outstanding amount but despite receipt of the said notice the Respondent have failed to liquidate the outstanding amount.
- Afterwards, SBI filed an Original Application against the Corporate Debtor and the Guarantors before the Debts Recovery Tribunal, DRT-II, New Delhi, which is pending till date.
- In the year 2017, the Corporate Debtor and the Guarantor i.e. Mr. Sameer Ahmad Khan alongwith other guarantors approached SBI for settlement of dues, which was accepted by SBI vide Letter dated **14.03.2017**
- **Inspite of the Settlement offer,** the Corporate Debtor and the Guarantors failed to comply in accordance to the settlement terms. It is submitted by RP in his report that due to failure to make the payment of the 2nd installment of Rs. 10 crore on or before 30.11.2017, SBI vide letter dated **09.03.2018** revoked the settlement and called upon the Corporate Debtor to make the payment due. All the communications between the Applicant/RP and Corporate Debtor and its Personal Guarantors has been placed on record.
- Applicant/RP submitted in his report that the Corporate Insolvency Resolution Process has been initiated against the Corporate Debtor in **C.P. (IB) No. 343 (PB) of 2019**. SBI/Financial Creditor filed its claim before the Resolution

Professional, wherein an amount of **Rs. 125,62,71,328.18/-** has been admitted by the Resolution Professional. RP/Applicant has submitted in his report that **No amount till date has been received by SBI in CIRP of Corporate Debtor. Afterwards** State Bank of India issued a Notice under Rule 7(1) of the Rules, 2019 dated **28.06.2020,** which was duly served upon the Guarantor. However, **no reply was received by SBI to the said notice within 14 days as per the Regulation.**

- **Pursuant to this *vide* the Order 06.01.2021,** this Adjudicating Authority imposed interim moratorium with respect to the Personal Guarantor under the terms of sec 96(1) of the IBC, 2016 and directed the RP to submit a report under the provisions of Section 99 of the Code.
- Applicant/RP has informed the Guarantor vide **Letter and Email dated 14.01.2021** in accordance to the Sec 99(2) about the initiation of Corporate Insolvency Resolution Process and further directed to prove the repayment of debt claimed as unpaid by the Financial Creditor i.e. SBI. But till date no response has been received from him. Copies of the Email and Letter dated **14.01.2021** is annexed herewith and marked as **ANNEXURE A-3 (COLLY)**
- The email dated 14.01.2021 was duly served upon the Guarantor and the Letter dated 14.01.2021 was delivered at the address of the Guarantor through Speed-Post on 21.01.2021. Copies of tracking reports is annexed herewith and marked as **ANNEXURE A-4 (COLLY). Despite all these initiative by the Applicant/RP,** no response has been from received from the Guarantor.
- Applicant/ RP submits that the Insolvency Application has been filed in the requisite form, Form C, in terms of Rule 7 (2) of the Rules, 2019, supported by requisite fee and documents. The Insolvency Application satisfies the requirements set out in Section 95 of the Code. The Personal Guarantor was duly served with demand notice dated **28.06.2020** by the Financial Creditor for

repayment of the debt owed by him to the Financial Creditor in terms of the provisions of the Code prior to filing the Insolvency Application, but the Personal Guarantor failed to repay the same. It is further submitted in his report that the Insolvency Application does not relate to "excluded debts" as defined under Section 79(15) of the Code and the Corporate Debtor, Personal Guarantor is not eligible for fresh start under Chapter II of the Code.

4. Therefore, based on the reasons recorded in the report submitted by the Resolution Professional, the application bearing **CP (IB)/948/PB/2021** is hereby admitted under Section 100 of the Code. The Insolvency Resolution Process is initiated against the Respondent/Guarantor and the moratorium is declared, 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 Section 101 of the Code. During the Moratorium Period:

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

b) *The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt; and*

c) *The debtor shall transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;*

d) *The Provisions of this Section 101 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

5. The Resolution Professional **Mr. Anil Kohli**, who has been appointed under Section 97 vide Order dated **06.01.2021**, is directed to cause a public notice published within 7 days of uploading of this Order on website of the NCLT, inviting claims from all Creditors, who shall register their claims as provided under Section 103 of the Code within 21 days of such issuance. The notice shall contain necessary information as provided under Section 102

(2) of the Code. The Resolution Professional is directed to take steps as mandated under the Code specifically mentioned under Part-II, Chapter-III of the Code.

6. The Resolution Professional shall prepare report of the meeting of the creditor on repayment plan with all details as provided under Section 112 and submit the same to this Authority, copies of which shall be provided to the Debtor and Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance of Code of conduct provided under Section 208 of the Code.

7. In terms of the above the present application stands **ADMITTED**.

8. Copy of this order shall be communicated to the Financial Creditor, the Debtor and the Resolution Professional by the Court Officer/Registry of this Tribunal.

Sd/-

AVINASH K. SRIVASTAVA
MEMBER, TECHNICAL

Sd/-

DHARMINDER SINGH
MEMBER, JUDICIAL