

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH NEW DELHI
COURT- III

CP (IB)-1038/2020 filed under Section 95 (1),
97, 60(2) of IBC, 2016 r/w Rule 7 (2) of the IB
(Application to Adjudicating Authority for IRP for
Personal Guarantors to CD) Rules, 2019.

In the matter of Arvind Dham.

State Bank of India

....Applicant

Order delivered on 23rd November, 2020.

Coram

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
Shri. NARENDRA KUMAR BHOLA, MEMBER (TECHNICAL)

For Applicant: Mr. Shardul S. Sroff, Ms. Pallavi S. Shroff,
Ms. Ritu Bhalla, Mr. Ajoy Roy,
Mr. Manu Nair, Mr. Anirudh Das,
Mr. Ajit Warriar, Mr. Nishant Joshi, Ms. Misha,
Mr. Anuj Berry (Advocates)

ORDER

(Through Video conferencing)

Per: CH. Mohd Sharief Tariq, Member (Judicial)

1. Under consideration is CP (IB)-1038/2020 filed under Section 95 (1), 97, 60(2) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "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 Debtor) Rules, 2019 (hereinafter referred as "IB Rules, 2019") for initiating the Insolvency Resolution Process (hereinafter referred as "IR Process") against personal guarantor

viz., *Mr. Arvind Dham*, a shareholder in the company viz., *Stride Autoparts Limited* (hereinafter referred as "Corporate Debtor").

2. The factual matrix of the case is that based on the representations made by the Corporate Debtor viz., *Stride Autoparts Limited*, the Applicant/Creditor (erstwhile State Bank of Travancore and State Bank of Bikaner & Jaipur) had disbursed credit facilities to the tune of Rs. 244,25,00,000/- (Rupees Two Hundred Forty-Four Crores Twenty Five Lakhs Only) to the Corporate Debtor by way of four separate loan agreements namely: (a) Term Loan Agreement dated 24.11.2012 for an amount of Rs. 125,00,00,000/- (Rupees One Hundred and Twenty Five Crores) (hereinafter referred as "Term Loan I") for tenor of 10 years (b) Term Loan Agreement dated 29.11.2012 for an amount of Rs. 75,00,00,000/- (Rupees Seventy Five Crores) (hereinafter referred as "Term Loan II") (c) Corporate Loan Agreement dated 21.12.2015 for an amount of Rs. 28,00,00,000/- (Rupees Twenty Eight Crores) (herein after referred as "Corporate Loan I") (d) Corporate Loan Agreement dated 13.01.2016 for an amount of Rs. 16,25,00,000/- (Rupees Sixteen Crores and Twenty Five Lakhs Crores) (herein after referred as "Corporate Loan II").

3. Pursuant to the Term Loan Agreement, a Deed of Hypothecation was executed by the Corporate Debtor in favour of the Applicant/Creditor (erstwhile State Bank of Travancore) thereby creating a pari passu charge over the entire movable property of the Corporate Debtor. A Memorandum of Entry dated 19.01.2013 was executed vide which the title deeds for the property situated at Industrial Plot No. SP-255 (B) industrial area Bhiwadi, Tehsil- Kaharani District, Alwar, Rajasthan were re-deposited to create a security by way of equitable mortgage for the Term Loan I and Term Loan II along with Term Loan Agreement for an amount of Rs. 100 Crores granted by the Central Bank of India. Further, revival letters dated 10.09.2015 in connection with Term Loan II and 15.10.2015 in connection with the Term Loan I were executed by the Corporate Debtor in favour of the erstwhile State Bank of Travancore and State Bank of Bikaner & Jaipur respectively. In relation to the Corporate Loan I the Corporate Debtor executed an agreement of Pledge of Goods and Assets in favour of the erstwhile State Bank of Bikaner and Jaipur, whereby the entire fixed assets, current assets and other assets of the Corporate Debtor have been pledged and an Agreement of Hypothecation of Goods and Assets dated

21.12.2015 was executed by the Corporate Debtor in favour of erstwhile State Bank of Bikaner and Jaipur, whereby all present and future goods, book debts and all other movable assets of the borrower have been pledged.

4. The Personal Guarantor viz., *Mr. Arvind Dham* vide Deed of Guarantee dated 13.01.2016 had guaranteed for the payments in respect of the Term Loan II and Corporate Loan II for an amount of Rs. 91,25,00,000/-(Rupees Ninety One Crores and Twenty Five Lakhs) and vide Deed of Guarantee dated 14.01.2016 the Personal Guarantor had guaranteed for the payments in respect of Corporate Loan I up to a sum of Rs. 28,00,00,000/-(Twenty Eight Crores). The Personal Guarantor in the light of the clear unequivocal terms of the Deeds of Guarantees defaulted to repay the debt in respect of the underlying loan Agreements.

5. The Corporate Debtor executed a revival letter dated 29.08.2018 in favour of the Applicant/Creditor for the Term Loan I from erstwhile State Bank of Bikaner and Jaipur, for the Term Loan II from the erstwhile State Bank of Travancore, for the Corporate Loan I and II from the erstwhile State Bank of Bikaner and Jaipur.

6. It is stated that the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor under Section 9 of IBC, 2016 and is pending before this Authority under CP (IB) No. 1281/ND/2018. The Applicant/Creditor had filed Joint OA. No. 1386/2018 seeking recovery of Rs. 518,48,10,146/- under the Recovery of Debts Due to Banks and Financial Institutions Act along with Canara Bank (erstwhile Syndicate Bank) and Central Bank of India before the Debt Recovery Tribunal against the Corporate Debtor.

7. It is averred that the Applicant/Creditor had sent a notice dated 24.09.2018 demanding for payment of Rs. 291,92,14,661.09/-(Rupees Two Hundred Ninety One Crores Ninety Two Lacs Fourteen Thousand Six Hundred Sixty One and Nine Paise) to the Corporate Debtor as well as to the Personal Guarantor in terms of Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. Further, the Applicant/Creditor sent a demand notice dated 19.08.2020 under Rule 7 (1) of the IB Rules, 2019 to the Personal Guarantor in view of the defaults under the Deed of Guarantees demanding Rs. 177,89,34,838

(Rupees One Hundred Seventy Seven Crores Eighty Nine Lakhs Thirty Four Thousand Eight Hundred and thirty Eight Only) in respect of the amount of debt in default as on 18.08.2020. Therefore, in the premises it is prayed to initiate the IR Process against the Personal Guarantor.

8. The Applicant/Creditor has clearly brought it out in its application coupled with admissible evidence that the Personal guarantor has committed default in making repayment of the term loan and Corporate Loan along with interest to the Applicant/Creditor for which he has given the personal guarantee to the Applicant/Creditor on behalf of the Corporate Debtor.

9. It is made known to everyone that on filing this Application by the Applicant/ Creditor through Resolution Professional viz., Mr. Gian Chand Narang, the interim-moratorium commences as is 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 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.

10. The Applicant/Creditor has proposed the name of Mr. Gian Chand Narang, Insolvency Professional for appointment as Resolution Professional, who has agreed to be appointed, declared that he is eligible to be appointed and that no disciplinary proceedings are pending against him. Therefore, Mr. Gian Chand Narang is appointed as the Resolution Professional in exercise of the powers conferred under Section 97 of the IBC, 2016 on this Authority subject to the Regulation 4 (1) and (2)

of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The details of the Resolution Professional are as under:

Name: Mr. Gian Chand Narang

Registration No. : IBBI/IPA-002/IP-N00362/2017-18/11031

Address: Block B2, Flat No. 214, Varun Apartment Sector, 9 Rohini NewSelhi-110008

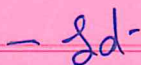
E-mail: narangcg.58@gmail.com

Mobile Number: 8860040302

11. The Resolution Professional shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 r/w the Rules made thereunder. He is directed to initiate the IR Process and to make the recommendations with the 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 to the Applicant/Creditor, as soon as the same is filed before this Authority.

12. The Applicant/Creditor and his Counsel are 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.

13. List the matter on 11th December, 2020 at 10:30 AM.



NARENDRA KUMAR BHOLA
Member (Technical)



CH. MOHD SHARIEF TARIQ
Member (Judicial)