

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. 5**

1) Company Petition (IB)-1062/MB/2021

Under Section 95 of the I&B Code,2016 read with Rule 7 of the I & B (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules,2019

In the matter of

State Bank of India,

through the Resolution Professional,

Mr. Mahesh Sureka,

Stressed Assets Management Branch-I, “The Arcade”, 2nd Floor, World Trade Centre, Cuffe Parade, Mumbai- 400005.

.... Petitioner/ RP

Vs.

Ms. Savita Satish Gowda,

501, 5th Floor, B-05, Sea Breeze

Society, Plot No. 16, Sec-16, Nerul,

Navi Mumbai- 400706.

....Respondent/Personal Guarantor

2) Interlocutory Application No. 2733 of 2021

Savita Gowda

.... Applicant

V/s

State Bank of India

..... Respondent

Order Pronounced on: 20.01.2022

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Adv. Subir Kumar a/w Adv. Disha Shah i/b. SDS Advocates
for State Bank of India (Respondent in I.A. 2733 of 2021)

For the Respondent : Mr. Rohit Gupta, Advocate

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This is an application filed by the Petitioner seeking initiating Insolvency Resolution Process of the Personal Guarantor.

BRIEF FACTS:

2. The Petitioner at the request of the borrower had approved restructuring package vide Master Restructure Agreement dated 30.03.2015, and sanction letter dated 30.03.2015. The Respondents / Guarantor is an erstwhile Promoter and

Guarantor of Sharon Bio- Medicine Ltd. (Corporate Debtor). The Respondents in in pursuance of the said Master Restructuring Agreement dated 30.03.2015, executed a deed of guarantee dated 30.03.2015. The guarantor had provided a joint, several, irrevocable, absolute, unconditional guarantee for the repayment of the amounts payable by the Borrower by the restructuring document.

3. The Corporate Debtor / Borrower was admitted in to the CIRP vide an order dated 24.07.2018. The Resolution Plan was approved by this Tribunal on 28.02.2018. However, the Resolution Plan has not been implemented till date and the Resolution Applicant failed to fulfil the mandatory requisites as mentioned under clause 12(5) of the Resolution Plan. Hence, the I.A. No. 400 of 2019, I.A. 2220 of 2020 in C.P. 246 of 2017 has been filed. However, this Tribunal on 02.02.2021 have allowed additional time to the Resolution Applicant to implement the Resolution Plan. Aggrieved by the order dated 02.02.2021, an appeal was filed before the Hon'ble NCLAT and is pending for adjudication.
4. The total amount of the debt due is Rs. 231, 03,18,820.11/- as on 31.07.2021, the principal amount of being Rs. 119,23,65,055.36/-. The Petitioner invoked the personal Guarantee vide legal notice dated 17.03.2018 and the Form B notice was issued on 11.08.2021. The Respondent / Personal Guarantor responded to the demand notice dated 11.08.2018 and replied on 25.08.2021.
5. The Respondent has filed an I.A. 2733 of 2021 questioning the maintainability of the said company petition on two grounds.

- i. To initiate Insolvency Resolution Process ('IR Process) against the Personal Guarantor before this Adjudicating Authority ('Hon'ble NCLT'), it is necessary that the Corporate Insolvency Resolution ('CIRP') against the Corporate Debtor is pending, or liquidation proceedings are filed. The said ground is taken in view of section 60(2) of IBC, Code, 2016.
 - ii. The debt/ liability of the Personal Guarantor under the Guarantee Deed stands extinguished / discharged upon approval of the Resolution Plan.
6. Heard the Counsel for the Financial Creditor and the Counsel for Respondent/Applicant in IA 2733 of 2021. Both the sides have filed written submissions.
7. The only question which arises for consideration is whether the present petition filed for Initiation of insolvency of the Personal Guarantor is maintainable in view of the fact that the Resolution Plan is approved by this Tribunal.
8. It is pertinent to refer to Section 60(1)(2)(3), of the Insolvency and Bankruptcy Code, 2016, which empowers the adjudicating authority to exercise territorial jurisdiction in matters relating to Insolvency Resolution and Liquidation of the Corporate Persons including the Corporate Debtor's. It is also clarified that where the Corporate Insolvency Process or Liquidation Process is pending before the NCLT, an application relating to the Insolvency Resolution or Personal Guarantor as the case may be filed before such National Company law Tribunal. Further, sub-clause 3 of section 60 of the Code, 2016 also provides that an insolvency resolution process of Corporate Guarantor or Personal

Guarantor, as the case may be, pending in any court or Tribunal shall stand transferred to the Adjudicating Authority dealing with the Insolvency Resolution Process or Liquidation Process of such Corporate Debtor. Section 60(1)(2)(3) of the Code.

9. Given the factual matrix of the present case, the order of admission of the Corporate Debtor was passed on 17.04.2017, in C.P. No. 246 of 2017, and the order approving the Resolution Plan was passed on 28.02.2018. However, the Resolution Applicant failed to implement the Resolution Plan. Hence the Petitioner has filed the I.A. 2220 of 2020 in C.P. No. 246 of 2017 and the same is pending for Adjudication.

10. This bench relies on the judgement of the *Hon'ble Supreme Court in the matter of Lalit Kumar Jain Vs. Union of India* which upheld the notification which related to personal guarantees of Corporate Debtor. The judgement categorically held at para 86 that the amendment section of section 60(2) of the Code, 2016, included the words "where the Corporate Insolvency process or Liquidation Process of the Corporate Debtor is pending before NCLT, an application relating to insolvency Resolution or Liquidation of Bankruptcy of the Corporate Debtor or personal guarantor, as the case may be of such Corporate Debtor shall be filed before the National Company Law Tribunal. Para 86 is reproduced as below;

"86. In addition to amending Section 2, the same Amendment also amended Section 60(2). Interestingly, though "personal guarantor" was not defined, and fell within the larger rubric of "individual" under the Code, the adjudicating authority for insolvency process and liquidation of corporate

persons including corporate debtors and personal guarantors was the NCLT- even under the unamended Code. The amendment of Section 60(2) added a few concepts. This is best understood on a juxtaposition of the unamended and the amended provisions: The unamended Section 60 (2) read as follows:

“(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy proceeding of a personal guarantor of the corporate debtor shall be filed before the National Company Law Tribunal.”

The amended Section 60 (2) reads as follows:

“(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before the National Company Law Tribunal”.

Further at para 91 of the said above judgment, a report of the Working Committee was captured which basically has pointed the interwoven connection between the Corporate Debtor and the Guarantor (who has extended its personal guarantee for the Corporate Debtor). The para 91 is

reproduced as below.

“91. The close proximity, or inter-relatedness of personal guarantors with corporate debtors, as opposed to individuals and partners in firms was noted by the report of the Working Group, which remarked that it:

“recognizes that dynamics, the interwoven connection between the corporate debtor and a guarantor (who has extended his personal guarantee for the corporate debtor) and the partnership firms engaged in business activities may be on distinct footing in reality, and would, therefore, require different treatment, because of economic considerations. Assets of the guarantor would be relevant for the resolution process of the corporate debtor. Between the financial creditor and the corporate debtor, mostly the guarantee would contain a covenant that as between the guarantor and the financial creditor, the guarantor is also a principal debtor, notwithstanding that he is guarantor to a corporate debtor.”

(Emphasis supplied) -----

At para 95, the Hon’ble Supreme Court has observed that the impugned notification authorized the Central Government and the Board to frame rules and regulations and allow pending actions against the personal guarantor to a Corporate Debtor before the Adjudicating Authority. The intent of the notification is to allow pending proceedings to be adjudicated in terms of the Code. Para No. 95 is reproduced below;

“95. The impugned notification authorizes the Central Government and the Board to frame rules and regulations on how to allow the pending actions against a personal guarantor to a corporate debtor before the Adjudicating Authority. The intent of the notification, facially, is to allow for pending

proceedings to be adjudicated in terms of the Code. Section 243, which provides for the repeal of the personal insolvency laws has not as yet been notified. Section 60(2) prescribes that in the event of an ongoing resolution process or liquidation process against a corporate debtor, an application for resolution process or bankruptcy of the personal guarantor to the corporate debtor shall be filed with the concerned NCLT seized of the resolution process or liquidation. Therefore, the Adjudicating Authority for personal guarantors will be the NCLT, if a parallel resolution process or liquidation process is pending in respect of a corporate debtor for whom the guarantee is given. The same logic prevails, under Section 60(3), when any insolvency or bankruptcy proceeding pending against the personal guarantor in a court or tribunal and a resolution process or liquidation is initiated against the corporate debtor. Thus, if A, an individual is the subject of a resolution process before the DRT and he has furnished a personal guarantee for a debt owed by a company B, in the event a resolution process is initiated against B in an NCLT, the provision results in transferring the proceedings going on against A in the DRT to NCLT.”

11. This Bench is of the opinion that be that as it may, the CIRP of the Corporate Debtor was commenced and the Resolution plan was approved by this Tribunal and the jurisdiction to entertain the Petition of the Personal Guarantor is vested by the Tribunal under section 60(1)(2)(3) of the Code. Further the Hon’ble Supreme Court at para 95, have observed that in the event of an ongoing resolution process or liquidation process or bankruptcy of the Personal Guarantor of the Corporate Debtor shall be filed with the concerned NCLT which is seized of the resolution process or liquidation.

Hence, the objection of the present Respondent/Personal Guarantor that the CIRP has culminated by way of approval of Resolution Process, by approval of Resolution Plan, is untenable. Once the Corporate Debtor was admitted into CIRP and Resolution Plan is approved, yet the Tribunal has the territorial jurisdiction to hear any applications filed by the Monitoring Committee and in the instant case, Interim Applications with regard to implementation of Resolution Plan are pending before the Tribunal and therefore this Tribunal is vested with the jurisdiction to entertain the Petition related to Personal guarantees of Corporate Debtor.

12. The Counsel for the Financial Creditor has relied upon the Master Restructuring Agreement dated 30.03.2015 and the Deed of Guarantee dated 30.03.2015, at clause 23 which expressly captures that the Guarantee is in the nature of continuing guarantee and that the Guarantee shall be continuing and shall be valid and in full force and effect till the final settlement deed.
13. The Petitioner has annexed the Balance confirmed, signed by the personal guarantor as on 31.03.2016. The petitioner invoked the guarantees and issued demand notice dated 17.03.2018. Further the notice under Form B was issued on 11.08.2021 and the Form B notice was replied to by the Respondent vide reply dated 25.08.2021.
14. The Respondent filed the I.A. No. 2733 of 2021, challenging the maintainability of present application on the ground that the CIRP has culminated by approval of Resolution Plan and that the Tribunal is not vested with the jurisdiction to entertain petition against the Personal Guarantors of Corporate Debtor in view of the approval of Resolution plan.

15. This Bench “Allows” the Application filed by Mr. Mahesh Sureka, Insolvency Resolution Professional, on behalf of the State Bank of India, Financial Creditor, under Section 95 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7 of the IBC Rules 2019 against Ms. Savita Gowda, the Personal Guarantor of the Corporate Debtor, M/s Sharon Biomedicine Limited in CP No. 1062 of 2021.
16. The Bench makes it clear that from the date of filing this Application, i.e.,07.09.2021, by the Petitioner, Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal Guarantor. During the Interim Moratorium period: (i) any pending legal action or proceedings 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. As per Section 96(3) of the Code, the provisions of sub-section 96(1) shall not apply to such transactions, as may be notified by the Central Government, in consultation with any financial sector regulator.
17. The Bench notes that the appointment of Resolution Professional under Section 97 of the Code is critical and essential not only for the Applicant but also to safeguard the assets of the Personal Guarantor in terms of the provisions of the Code. Since the present Petition has been filed through the Resolution Professional, Mr. Mahesh Sureka, bearing IBBI Registration No. IBBI/IPA-001/IP-P00413/2017-2018/10736, this Bench confirms the appointment of the Resolution Professional in the matter.

18. In this matter, the Resolution Professional shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made there under. He is directed to make the recommendations, with reasons in writing, for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the Code. The Resolution Professional shall provide a copy of the report, under Sub-Section 7 of Section 99 to the Creditor as soon as the same is filed before this Authority.
19. IA No. 2733 of 2021 is dismissed.
20. List this matter for further hearing on 21.03.2022.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
SUCHITRA KANUPARTHI
MEMBER (JUDICIAL)