

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

CP (IB)- 722 (ND)/2020 filed under Section 95 (1) 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 Bhavnesh Kanwar

Tata Capital Financial Services Limited

....Applicant/Financial Creditor

Versus

Bhavnesh Kanwar

....Respondent/Personal Guarantor

Order delivered 9th of February, 2021

Coram

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

For Applicant: Mr. R. Sudhinder, Mr. Nikhil Singh (Advocates)

ORDER

(Through Video conferencing)

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

1. Under consideration is CP (IB)-722(ND)/2020 filed by Tata Capital Financial Services Limited (hereinafter referred as "Applicant/ Creditor") under Section 95 (1) 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. Bhavnesh Kanwar (hereinafter referred as "Debtor"), *personal* guarantor for

the company viz., *M/s. Rave Scans Private Limited* (hereinafter referred as "Corporate Debtor").

2. The factual matrix of the case is that the Applicant/Creditor, a non-banking finance Company incorporate under the provisions of the Companies Act, 1956 and duly registered with the Reserve Bank of India had disbursed loan facility to the Corporate Debtor. The Applicant/ Creditor by way of Term Loan Agreement dated 29.07.2013 disbursed loan to the tune of Rs. 8,00,00,000/- (Rupees Eight Crore Only) for a period of 60 months based on the representations made by the Corporate Debtor.

3. Pursuant to the Term Loan Agreement, a Letter of Guarantee dated 29.07.20213 was executed by the Mr. Rakesh Bhatnagar, Ms. Anuradha Bhatnagar and Mr. Bhavnesh Kanwar as a security of the Term Loan Agreement in favour of the Applicant/Creditor. The other security held by the Applicant/Creditor in relation to the loan facility are (i) Deed of Hypothecation dated 02.12.2013 thereby creating a charge by way of hypothecation on all book, debts, receivables and stocks, machinery purchased and to be purchased out of the funds provided by the Creditor under the loan Agreement (ii) Demand Promissory note (iii) Net worth Affidavit dated 29.07.2013 executed by Mr. Bhavnesh Kanwar.

4. It is stated that the Corporate Debtor on 30.03.2017 stopped making payments to the Applicant/Creditor and the Loan Account of the Corporate Debtor was declared as Non-Performing Asset on 30.06.2017. Subsequently, vide Order dated 25.01.2017 the application under Section 10 of IBC, 2016 filed by the Corporate Debtor was admitted. Thereafter, the Resolution Plan submitted by the Resolution Applicant viz., Mr. Rahul Jain was approved vide Order dated 17.10.2018. The Hon'ble NCLAT recorded in the Order dated 17.09.2019 that an amount of Rs. 4, 07, 23,000/- (Rupees Four Crores Seven Lakhs Twenty-Three Thousand Only) had been claimed by the Applicant/Creditor against which the liquidation value as ascertained by the Resolution Professional in the Corporate Insolvency Resolution Process under the Code was Rs. 3,07,99,000/- (Rupees Three Crores Seven Lakhs Ninety-Nine Thousand Only) and the same was paid to the Applicant/ Creditor by the Resolution Applicant under the Resolution Plan. Therefore, as on 20.12.2019 an

amount of Rs. 1,67,21,256/- (Rupees One Crore Sixty Lacs Twenty-One Thousand Two Hundred Fifty-Six Only) is outstanding.

5. It is averred that the Applicant/Creditor had sent a demand notice under Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 dated 24.09.2018 in respect of the amount of debt in default as Rs. 1, 67, 21,256/- (Rupees One Crore Sixty Seven Lacs Twenty One Thousand Two Hundred Fifty Six Only). Therefore, in the premises it is prayed to initiate the IR Process.
6. 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 alongwith interest to the Applicant/Creditor for which he has given the personal guarantee to the Applicant/Creditor on behalf of the Corporate Debtor.
7. It is made known to everyone that on filing this Application by the Applicant/ Creditor 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.
8. The Applicant/Creditor has not proposed the name of Insolvency Professional for appointment as Resolution Professional, therefore, we hereby appoint **Mr. Rajesh**

Ramani from the list provided by IBBI 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. Rajesh Ramani

Registration No. : IBBI/IPA-C02/IP-N00993/2020-2021/13187

E-mail: rajeshramani2407@gmail.com

Mobile Number: 9811377475

9. 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 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, and personal guarantor for filing objection, if any, as soon as the same is filed before this Authority.

10. The Applicant/Creditor and his Counsel are directed to serve the copy of this Order along with a copy of the Application and documents on the personal guarantor and Resolution Professional by all modes for information and compliance.

11. List the matter on 25th February, 2021 at 10:30 AM.


NARENDRA KUMAR BHOLA
Member (Technical)


CH. MOHD SHARIEF TARIQ
Member (Judicial)