IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III

IB-380/(ND)/2021

Section: Under Section 95 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (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 its Authorized Person, Mr. S.V. Saravanan)
Stressed Assets Management Branch-1,
New Delhi (Branch Code 04109),
12th Floor, Jawahar Vyapaar Bhawan,
1 Tolstoy Marg, New Delhi- 110001

...Applicant/ Financial creditor

versus

Mrs. Kiran Gupta
(Personal Guarantor of M/s Metenere Ltd.)
W/o Raman Gupta
R/o F-73, Preet Vihar
New Delhi- 110092

...Respondent/ Personal Guarantor

Coram:
SH. P.S.N. PRASAD, Hon'ble Member (Judicial)
SH. NARENDER KUMAR BHOLA, Hon'ble Member (Technical)

Counsel for Applicant: Ankur Mittal, Meera Murali
Counsel for Respondent:

ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 11.08.2021

1. This is an application filed by 'State Bank of India' under Section 95 of the Insolvency and Bankruptcy Code, 2016 through its Authorized Personnel Mr. S.V. Saravanan against Mrs. Kiran Gupta, Personal Guarantor to the Corporate Debtor, 'M/s Metenere Ltd'. The Authorized Person has been appointed by the Financial Creditor, State Bank of India, to file the present Application under Section 95 of the Code seeking to initiate Insolvency resolution process against personal Guarantor of Corporate Debtor (M/s Metenere Ltd) Mrs. Kiran Gupta in respect of the Outstanding debt of Rs. 1169,37,87,061.00 (Rupees One Thousand One Hundred Sixty-Nine Crore Thirty-Seven Lakhs Eighty-Seven Thousand and Sixty-One Only) as on 17.05.2021 due from the Corporate Debtor under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors), Rules, 2019.

2. That the Ld. Counsel for the Applicant submitted that the Corporate Debtor i.e., M/s Metenere Ltd was admitted under Insolvency Resolution Process by NCLT, New Delhi pronounced on 25.09.2020 and delivered on 03.10.2020 vide IB no. 639/(PB)/2018.

3. The Ld. Counsel for the applicant submitted that a Personal Guarantee by Mrs. Kiran Gupta wife of Raman Gupta, of the Corporate Debtor Company M/s Metenere Ltd was given to State Bank of India vide a Deed of Guarantee dated 05.12.2014 and supplemental deed of guarantee dated 23.03.2015 and third supplemental deed of guarantee dated 20.07.2016.

4. The Ld. Counsel for the applicant further submitted that a Demand Notice in Form B under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtor) Rules, 2019 was issued by the Financial Creditor, i.e., State Bank of India on 01.02.2021 to the Personal Guarantor in respect of the unpaid debt due from M/s. Metenere Ltd. (Corporate Debtor) under rule 7(1) of the IBC, 2016. Further, the

Applicant has satisfactorily produced proof of evidence that the said notice was delivered to the Personal Guarantors on 02.06.2021 along with computation of the amount of default and other particulars. The proof of delivery has been annexed by the applicant. The Ld. Counsel for the Applicant mention that there has been no response from the Respondent side to the demand notice.

5. The applicant in Part- III of Form-C has submitted that the Record of Default by Information Utility recording of debt committed by the Corporate Debtor M/s Metenere Ltd. has also been annexed with the application.

6. That the Applicant in Part IV of the Form-C has proposed the name of Mr. Vijender Sharma, having registration number IBBI/IPA-003/IP-N00003/2016-2017/10022 have been proposed by the State Bank of India to act as the Resolution Professional in the Insolvency Resolution process of Mrs. Kiran Gupta.

7. It is pertinent to mention that as per part- III of Form-C, the total debt from the personal Guarantor by way of personal Guarantee given to M/s Metenere Ltd., including the rate of interest as on 17.05.2021 amount to Rs.

1169,37,87,061/- (Rupees One Thousand One Hundred Sixty Nine Crore Thirty Seven Lakhs Eighty Seven Thousand Eighty Seven Thousand and Sixty One Only).

8. This Tribunal heard the arguments advanced by the Ld. counsel for the Applicant and perused the averments made in the application as well as the documents enclosed with the application. Further, the Respondent has not filed any submissions and on the date of hearing there was no representation from the side of the Respondent i.e., the Personal Guarantor.

9. That based on the documents produced and placed on record before this Tribunal and on the submissions made by the Applicant it can be concluded that there is a 'default' on the part of the Personal Guarantor by not fulfilling the debt owed to the Corporate Debtor, i.e. Metenere Ltd. as per the Deed of Guarantee entered between the parties through the Deed of Guarantee dated 29.07.201 and other subsequent deeds.

10. This Tribunal **"Allows"** the Present Application filed by Mr. S.V. Saravanan, Authorized Person on behalf of State Bank of India, the Financial Creditor, under Section

95 of the Insolvency & Bankruptcy Code, 2016 read with Rule 7 of the IBC Rules 2019 against Mrs. Kiran Gupta wife of Mr. Raman Gupta, the Personal Guarantor of the Corporate Debtor, (M/s. Metenere Ltd). The Interim Moratorium as per Section 96(1) of the Code has commenced from the date of filing of Application by the Financial Creditor, i.e., 02.06.2021.

11. The Tribunal makes it clear that from the date of filing this Application i.e., 02.06.2021 by the Applicant, 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.

12. Since, 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, hence, in Part- IV of the present application, Resolution Professional Proposed, Mr. Vijender Sharma, bearing Registration No. IBBI/IPA-003/IP-N00003/2016-17/10022, is being confirmed by this bench for appointment as the proposed Resolution Professional in the matter.

13. In this matter, the Resolution Professional, Mr. Vijender Sharma, 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.

14. List the matter for further proceedings in the case on 13th September 2021.

-Sd/-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

-Sd/-

(P.S.N. PRASAD)
MEMBER (JUDICIAL)

DIVYA