

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
(IB)-703/ND/2023

IN THE MATTER OF:

Varsha ... **Applicant/Petitioner**

Versus

Ritzy Chemicals Private Limited ... **Respondent**

Under Section: 7 of IBC, 2016

Order delivered on 17.01.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Harsh Sharma, Adv. Pranav Khanna

For the Respondent :

For the RP :


Hearing Through: VC and Physical (Hybrid) Mode

ORDER


The present application has been preferred by the Applicant, namely Mrs. Versha D/o – Late M.K. Malhotra alleging that she stood as Guarantor qua the CD which Ritzy Chemicals Private Limited and as the CD defaulted to discharge its liability towards its Creditor i.e. Union Bank of India, the Bank could recover the money from her. According to her, the FDIs offered by her as security were encashed by the Bank. It is her submission, since the Bank had recovered a total amount of Rs. 26,57,60,000/- from the Financial Creditor/ Guarantor i.e. the Applicant, she has become Financial Creditor qua the CD. According to her, in September, 2023, she demanded the amount of Rs. 26,57,60,000/- from the CD, but the CD could not respond to her demand.

2. Having drawn our attention to Letter dated 01.07.2023, the Ld. Counsel appearing for the Applicant, could espouse that the CD had agreed to pay the aforementioned amount of Rs. 26,57,60,000/- to the Applicant

on or before 30.09.2023, the text of the Letter enclosed as Annexure-I to the Application reads thus:-



RITZY CHEMICALS PVT. LTD.
MFRS. OF STABILIZE SOFTNERS
Regd. Off.: DTJ-132, 1st Floor, DLF Tower-B, District Center, Jasola, New Delhi-110025.
Mobile : +91-9810400002
E-mail : skseth0062@gmail.com
CIN No. : U74999DL2007PTC161977



ANNEXURE I E 32

To, Date: 01/07/2023

Ms Varsha
R/o B-342, New Friends Colony,
New Delhi-110 025

We are thankful to you in helping out at the time when our company was in sheer need of funds.

We appreciate that the guarantee and FDRs offered by you as collateral to secure the loan sanctioned to our company has been consumed by the bank as partial recovery of our dues including Rs. 6,36,00,000 for Faridabad Property and FDRs amounting to Rs. 20,21,60,000.

Thus, we owe you a debt amounting to Rs.26,57,60,000. We understand that the said document is required by you for compliance purposes. You are requested to bear with us. That we are in talks with the banks to for an amicable settlement with the bank. Likely our business will pick up post settlement.

As agreed, we shall remit you the payments of Rs. 26,57,60,000. [Rs.6,36,00,000 + Rs. 20,21,60,000] at the earliest on or before 30/09/2023.

For Ritzy Chemicals Private Limited
(Signature)
Authorized Signatory

3. To show the discharge of the liability of the CD towards Union Bank of India by her the Applicant has made reference to its Ledger account for the period from 01.06.2022 to 20.04.2023. A copy of Ledger has been placed on record at Page 31 of the Application.

ANNEXURE ID 31

RITZY CHEMICALS PRIVATE LIMITED (DAMAN)
56-B, BHENSLORE, KUNTA ROAD
DUNETHE, NANI DAMAN
CIN: U74999DL2007PTC161977

VARSHA
Ledger Account
B-342, New Friends Colony
New Delhi

1-May-2022 to 20-Apr-2023

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
1-5-2022	By Opening Balance			20,21,60,000.00	
31-8-2022	By UNION BANK OF INDIA (CASH CREDIT) A/C	Journal	180	6,03,07,249.03	
	By UNION BANK OF INDIA (CASH CREDIT) A/C	Journal	181	32,92,750.97	
				26,57,60,000.00	
To	Closing Balance			26,57,60,000.00	26,57,60,000.00

4. The Guarantee deed executed by the Applicant in favour of the Union Bank of India is on record at Page 26 of the Application and reads thus:

LETTER OF GUARANTEE (SD-01)

20
Place: New Delhi

To
UNION BANK OF INDIA
INDUSTRIAL FINANCE BRANCH
NEW DELHI

IN CONSIDERATION OF Union Bank of India (hereinafter called 'the Bank' which expression shall include its successors and assigns) giving credit or accommodation or granting facilities by making or continuing advances, or otherwise at my request to Ritz Chemicals Private Limited (hereinafter called the 'the Principal') I severally guarantee to the Bank the due payment and discharge two days after demand of all present and future advances, liabilities, bills and promissory notes whether made, incurred or discounted before or after the date hereof to or for the Principal either alone or jointly with any other person or persons and also of bills, promissory notes, of guarantees held by the Bank from time to time in any manner together with all relative interest, commission and other banking charges including legal charges and expenses.

And I severally further agree as follows:

MY liability to the Bank hereunder shall be that of a Principal debtor and at the Bank's option, the Bank may treat me as primarily liable for the debt of the Principal or the balance from time to time due in respect thereof provided always that the amount for which I shall be liable under the Guarantee shall not exceed Rs. 3,15,00,00,000/- (Rupees Three Hundred and Fifteen Crores Only) and interest on such amount or on such less sum as may be due at the rate which the Principal is or may become liable to pay to the Bank from the date of the Principal's default until payment. My liability under this guarantee is restricted to the extent of value of mortgaged Plot No. 567, Sector 21A, Urban Estate Faridabad, Haryana measuring 1011.11 sq. yds. owned by me and FDR of Rs. 20,25,00,000 pledged by me for the credit limits of the Principal.

THIS GUARANTEE shall be continuing security binding me and my personal representatives until the receipt by the Bank of notice in writing to discontinue it and notwithstanding the discontinuance by or any release or granting of time or indulgence to any one or more of us this Guarantee shall remain a continuing security as to the other or others and if discontinued by notice this Guarantee shall nevertheless as to the party or parties giving such notice continue to be available (subject to the aforesaid limit of total amount) for and shall extend to all indebtedness and liabilities of the Principal to the Bank at the date of the receipt of such notice whether then certain or contingent and whether then payable forthwith or at some future time or times and also for and to all credits then established by the Bank for the Principal and for and to all cheques, drafts, bills, notes and negotiable instruments drawn by or for the account of the Principal on the Bank and dated or purporting to be dated on or before such date although presented to or paid by the Bank after such date.

THIS GUARANTEE is additional and without prejudice to any securities or obligations which the Bank may now or hereafter have in respect of any indebtedness or liabilities hereby guaranteed and all rights and remedies in respect thereof are reserved.

THIS GUARANTEE shall not be discharged by any partial payment or any fluctuation or settlement of accounts or existence of a credit balance of any account at any time and shall continue in force notwithstanding that the Principal (being a Corporation) had or has no power to obtain such credit, accommodation, facilities or advances as aforesaid or that it has exceeded its powers in obtaining the same and notwithstanding the discharge of the Principal by operation of law or by death and in the event

THE BANK shall have full discretionary power with or without reference or notice or consent to or from me to grant time or other indulgence to or accept or make any composition or arrangement with the Principal or any person or persons liable in respect of any indebtedness or liability hereby guaranteed and also vary, abstain from perfecting, exchange, renew, discharge, release, enforce and deal with in whole or in part and from time to time any bills, notices, mortgages, charges, liens or any securities obligations or decrees now or hereafter filed by the Bank in respect thereof and generally to treat me as though I were primarily and severally liable with the Principal.

It is also agreed that any admission or acknowledgement in writing by the principal debtor of the amount of indebtedness of the principal debtor or otherwise as in relation of the subject matter of this guarantee, shall be binding on me and I accept the correctness of any statement of account served on the principal debtor which is duly certified by any Manager or Officer of the Bank and the same shall be binding and conclusive as against me also, and I further agree that in making an acknowledgement or making a payment the principal debtor shall be treated as my duly authorized agent for purpose of Indian Limitation Act, 1963.

I further specifically agree that the guarantee shall continue to remain in force and I shall continue to be liable thereunder for all amounts due and payable to you by the principal/s even though the principal/s has / have not renewed the documents and even though the amounts due from the principal/s gets time barred and you cannot recover the same from the principal/s by filing a suit or any legal proceedings against the principal/s.

I hereby consent to your making any variance that you may think fit in terms of your contract and with the principal/s and to your determining enlarging or varying any credit to him / them to your making any composition with him / them or promising to give him / them time or not to sue him / them and to your parting with any security you may hold for the guaranteed debt and accordingly, I shall not be entitled to claim any of the rights conferred on sureties by Sections 133, 134, 135, 139 and 141 of Contract Act.

I waive all suretyship or other rights at any time inconsistent with any of the terms hereof.

If the Bank should receive payment from the Principal or any person or persons as aforesaid liable to the Bank or from any security held by the Bank or if the Principal being an individual or individuals for any person or persons as aforesaid liable to the Bank shall become bankrupt or insolvent or enter into any arrangements or composition with his or their creditors or being a Company shall go into liquidation, the Bank shall be at liberty without discharging my liability to make or assent to any compromises, compositions or arrangements or to prove and to rank as creditors in respect of the general balance of the Bank's account or any item or items thereof, and to receive dividends thereupon and all such payments and dividends received shall be treated as payments in gross and my liability shall extend to the ultimate balance after deducting such payments other than payments made by any co-surety for the full sum hereby guaranteed and to the entire exclusion and surrender of all my rights as surety in competition with the Bank, the status of Bankruptcy or any rule of law or equity to the contrary notwithstanding.

I agree that a copy of the account of the Principal contained in the Bank's book of account (or of the account for preceding six months if the account shall have extended beyond that period) signed by the Manager for the time being of the office at which such account shall be kept or any office of the

Bank, shall be conclusive evidence against me of amount for the time being due to the Bank from the Principal in any action or other proceeding brought against me upon this guarantee.

SHOULD the Principal be a Limited Company, corporate or unincorporated body, committee, firm, partnership, trustees or debtors on a joint account the provisions herein before contained shall be construed and take effect where necessary as if words importing the singular number included also the plural number. This my Guarantee shall then remain effective notwithstanding any death, retirement, change, accession or addition, as fully as if the person or persons constituting or trading or acting as such body, committee, firm, partnership, trustees or debtors or joint account at the date of the Principal's default or at any time previously was or were the same as at the date hereof. And further the Bank shall not be bound to inquire into the powers of the Principal or any Agents acting or purporting to act on the Principal's behalf and the Bank may recover against me to the extent herein before mentioned notwithstanding that any security given or to be given to the Bank may be void, defective or formal or informal or notwithstanding that the principal being a Limited Company, corporate or unincorporated body or committee may have had no borrowing powers or may have exceeded its borrowing powers or that the borrowing from the Bank may have been ultravires.

If this Guarantee is given by a Limited Company alone the various joint and several agreement herein contained shall be read or construed as if they were several.

Any notice by way of request, demand or otherwise hereunder may be given by the Bank to me or any of us personally or may be left at then or last known place of business or residence in India of me or any of us addressed as aforesaid to me or may be sent by post to me addressed as aforesaid and if sent by post it shall be deemed to have been given at the time when it would be delivered in due course of post and shall be sufficient to prove that the envelope containing the notice was posted. If by reason of absence from India or otherwise, I cannot be given any such notice the same if inserted once as an advertisement in a newspaper circulating in the town mentioned at the commencement of this Guarantee, shall be deemed to have been effectively given and received on the day which such advertisement appears.

5. To buttress the plea that the amount of Loan sanctioned to the CD was repayed by the Applicant, the Ld. Counsel appearing for the Applicant has made reference to the Order dated 25.08.2022 passed by Mr. Rajesh Malhotra, Presiding Officer of DRT, which reads thus:

ANNEXURE I G 34

NDN/665/2022 (SA) | Varsha Sethi v. Union Bank of India
 Dated:- 25.08.2022 | Item no. 24

Present:- Sh. Samrender Kumar, Counsels for respondent bank,
 alongwith Sh. Amit Kumar Sinha, Chief Manager of respondent bank,
 Sh. Mohit Chaudhary, Counsel for SA applicant,
 alongwith Ms. Varsha Sethi, SA applicant in person.

Registry is directed to register the SA.

In compliance of directions given by this Tribunal on 22.08.2022 both the parties have amicably settled this matter.

In view of settlement, SA applicant Varsha Sethi handed over two demand drafts no. 088490 dated 17.08.2022 for an amount of Rs. 6.36 Crores drawn on Indusind Bank, New Delhi and DD No. 088494 dated 22.08.2022 for Rs. 1.00 lac to respondent bank.

Sh. Amit Kumar Sinha, Chief Manager of respondent bank after receiving the said drafts also handed over original documents, No Due Certificate dated 25.08.2022 to the SA applicant.

Statements of both the parties is also recorded to this effect. In view of settlement, the present SA is hereby disposed of being amicable settled, with liberty to respondent bank to pursue against the borrower and other guarantors in the account of Ritzzy Chemicals Ltd. The lien of respondent bank over Plot no. 567, Sector-21A, Faridabad, Haryana, registered with HUDA (now HSVP) is hereby cancelled. The date fixed for 26.08.2022 be cancelled, in view of this settlement and file be consigned to record room.

Sd/-
 (Rajesh Malhotra)
 Presiding Officer
 DRT-II, DELHI

6. In Part-IV of the Application, the Applicant has given the details of the amount recovered by the Creditor from the Applicant, as the Applicant stood as Guarantor qua the CD in favour of the Financial Creditor in respect of the said amounts, the Part-IV of the Application reads thus:

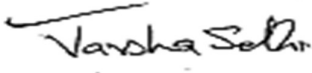
**PART - IV
 PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND
 EVIDENCE OF DEFAULT]**

1.	Particulars of security held, if any, the date of its creation, its estimated value as per the creditor	--NA--
2.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default if any	--NA--
3.	Record of default with the information utility	--NA--

4.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925 [10 of 1925]	--NA--
5.	The latest and complete copy of the financial contract reflecting all amendments and waivers to date.	<p>True copy of letter of undertaking and guarantee dated 04.12.2019 has been annexed herewith and marked as Annexure - I(C)</p> <p>True copy of confirmation of ledger account by the Corporate Debtor for the period 2022-2023 [Dated 20.04.2023] has been annexed herewith and marked as Annexure - I(D)</p> <p>True copy of letter dated 01.07.2023 has been annexed herewith and marked as Annexure - I(E)(Copy)</p>
6.	A record of default as available with any credit information company	--NA--
7.	Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891	--NA--
8.	List of other documents attached to this application in order to prove the existence of financial debt, the amount of default	<p>True copy of relevant extract of the bank account statement of the Financial Creditor has been annexed herewith and marked as Annexure - I(F)</p> <p>True copy of order dated 25.08.2022 passed by the Ld. Debts Recovery Tribunal- II, New Delhi in NDN/ 665/ 2022 (SA) has been annexed herewith and marked as Annexure - I(G)</p>

I, Ms. Varsha [Financial Creditor], has paid the requisite fee for this application through 02.11.2023 on 02.11.2023 and a served copy of this application by registered post/ speed post/ by hand/ electronic means to the registered office of the Corporate Debtor.

Yours sincerely,

Signature of person authorized to act on behalf of the Financial Creditor	
Name in block letters	MS. VARSHA
Position with or in Financial Creditor	Herself
Address of the person signing.	B-342, New Friends Colony, New Delhi- 110025

7. We issued notice to CD on 13.11.2023, but the Applicant could not file proof of service. Thus, we issued fresh notice to CD on 12.12.2023. The Applicant could file affidavit of service of notice on 04.01.2024. Today, again there is no appearance on behalf of the Respondents- CD despite service of notice. We cannot be oblivious of the facts that Section 7(4) of IBC, 2016 has the spirit that the decision regarding an application filed under Section 7(1) of IBC, 2016 need to be taken within 14 days of the date of receipt of the application. We cannot wait for CD to appear in the matter indefinitely.

8. As can be seen from the Section 7(5) of IBC, 2016 where the adjudicating authority is satisfied that the default has occurred and the application under Section 7(1) is complete and there is no disciplinary proceedings pending against the proposed Resolution Professional it may by order admit such application. In the present case, the Ld. Counsel appearing for the Applicant would draw our attention to the letter written by the CD to Applicant, assuring her that the payment of the amount of Guarantee would be made to her by the date mentioned in the letter i.e. 30.09.2023. In the wake, particularly in view of the order passed by the DRT, the Guarantee Deed and the letter of CD placed on record, we are left with no doubt that the CD has liability towards the Applicant. As can be seen from the order passed by Kolkata Bench of this Tribunal in the matter of **Orbit Towers Pvt. Ltd. vs. Sampoon Suppliers Pvt. Ltd.** in (C.P (IB) No. 2046/KB/2019) dated 27.06.2022, a Corporate Guarantor can initiate Insolvency Proceedings under Section 7 of Insolvency and Bankruptcy Code, 2016

against principal borrower using the right to subrogation even in the absence of contract between Guarantor and the Principal Borrower. The relevant excerpt of the Order, reads thus:

“20. Now, interesting question of law has arisen in this matter, where the liability of the principal borrower (Corporate Debtor herein) has been discharged by the Guarantor (Financial Creditor herein). Sections 140 and 141 of the Indian Contracts Act, 1872 talk of “right of subrogation”. It is the substitution of another person in place of the Creditor, so that the person substituted will succeed to all the rights of the creditor with reference to the debt. The guarantor’s right to be placed in the creditor’s position on the discharge of the principal debtor’s obligation, to the extent that the Guarantor’s property or funds have been used to satisfy the Creditor’s claim and to effect such discharge is called the Guarantor’s right of subrogation. The Guarantor who performed the obligations of the Principal Debtor which are subject to his guarantee is entitled to stand in the shoes of the Creditor to enjoy all the rights that the Creditor has against the Principal Debtor. Section 140 provides that rights of surety of payment or performance where a debt has become due on default of the Principal Debtor to perform, the surety upon making payment or performance of all that, is eligible for and is invested with all the rights which the Creditor had against the Principal Debtor. The Creditor had the rights to sue the Principal Debtor. The Guarantor may therefore, sue the Principal Debtor having got and invested with all rights of the Creditor. Section 141 of the Indian Contract Act, 1872 further provides that the surety is entitled to the benefit of every security which the creditor has against the Principal Debtor, at the time when the contract of surety-ship is entered into, whether the surety knows of the existence of such security or not and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.”

9. In view of the aforementioned, **we are left with no option but to admit the present application. Ordered accordingly. In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any

judgment, decree or order in any court of law, tribunal, arbitration panel or other authority:

- (b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

10. As proposed by the Petitioner **Mr. Parminder Singh Bhullar**, having Registration 1BBI/PA-002/IP-N01127/2021-2022/13700 is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

“Mr. Parminder Singh Bhullar shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”

11. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

12. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

13. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)