

Sl. No. 336/2023

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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 33/95/JPR/2023

IN THE MATTER OF:

BANK OF BARODA

...Applicant

VERSUS

MR. SAMEER SOMANI

...Respondent

MEMO OF PARTIES

BANK OF BARODA

**ROSARB, II Floor, Baroda Bhawan,
13 Airport Plaza, Durgapura, Tonk
Road, Jaipur- 302018 (Rajasthan)**

...Applicant

VERSUS

MR. SAMEER SOMANI

**Personal Guarantor M/s Aditya Telelink Limited,
Flat No. 406, Okay Plus Empress,
Bani Park, Jaipur- 302016
(Rajasthan)**

...Respondent

FOR THE PETITIONER(S) : Anubha Singh, Adv.

FOR THE RESPONDENT(S) : Shashank Bhansali, Adv.

Order Pronounced On: 19.12.2023

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Sdr



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**Assistant Registrar
National Company Law Tribunal**

ORDER**Per : Shri Deep Chandra Joshi, Judicial Member**

1. The present application is filed by *Bank of Baroda* ('Creditor'/ 'Applicant') with a prayer to initiate Insolvency Resolution Process against *Mr. Sameer Somani* ('Personal Guarantor'/ 'Respondent'), through *Ms. Anubha Singh*, Advocate, under Section 95 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Personal Guarantor has stood as the Guarantor in respect of the loans availed by *M/s Aditya Telelink Limited* ('Corporate Debtor').
2. It is stated that the Personal Guarantor executed a personal guarantee to secure the repayment of financial assistance availed by the Corporate Debtor from the Applicant/Creditor. Pursuant to default in repayment of debt by the Corporate Debtor, the personal guarantee of *Mr. Sameer Somani*, being the personal guarantor was invoked and accordingly, the Personal Guarantor was called upon to repay the debt of the Corporate Debtor, which it failed to repay.
3. It has been submitted that the loan was sanctioned to the Corporate Debtor on 12.06.2010 by the Applicant Bank wherein Cash Credit of Rs. 12 crores and Bank Guarantee of Rs. 3 crores amounting to a total of Rs. 15 crores

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was approved. The General Form of Guarantee dated 12.06.2010 was executed by the Debtor i.e., *Mr. Sameer Somani* in favour of the Applicant Bank. Thereafter on 09.04.2012, the loan granted was enhanced to the proposed limit of 18 crores by the Applicant Bank and in furtherance of the same General Form of Guarantee dated 10.04.2012 was executed by the Debtor in favour of the Applicant Bank.

4. Thereafter, vide letter numbered as MIDJAI/ADV/2015-15/, the credit facility was renewed further by the Applicant Bank. Later, vide Letter of Acknowledgement dated 16.05.2016, the Corporate Debtor and its Personal Guarantors including the Debtor herein acknowledged the loan granted by the Applicant Bank. It has been contended that on 28.09.2016, the loan account of the Corporate Debtor was classified as Non-Performing Asset by the Applicant Bank and subsequently, an Original Application was filed before the Debt Recovery Tribunal, Jaipur. On 07.12.2021, the Recovery Certificate was issued by the Debt Recovery Tribunal in favour of the Applicant Bank but the loan was not repaid by either the Corporate Debtor or the Guarantors including the Debtor herein. Hence, the date of default as mentioned by the Applicant is 07.12.2021.
5. Thereafter, a demand notice dated 30.11.2022 was issued by the Applicant to the Personal Guarantor in Form B as per Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules,

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2019 calling upon the Personal Guarantor to pay the dues of the Corporate Debtor, within a period of 14 days. The Demand Notice has been annexed as Annexure-8 of the Application.

6. In Part III of the Application, the total debt reflected is Rs. 10,73,87,620.38/- (Rupees Ten Crores Seventy- Three Lakhs Eighty- Seven Thousand Six Hundred Twenty and Thirty- Eight Paise Only) as on 30.11.2022 plus future interest @ 10% (Simple) as per Recovery Certificate (RC No. 487/2021) dated 07.12.2021 issued by Debt Recovery Tribunal, Jaipur and the date on which debt became due is 07.12.2021.
7. We have heard the learned counsels for the parties and perused the application and documents on record.
8. It is observed that the Personal Guarantor has defaulted in payment of the dues within the statutory period of 14 days from the service of the demand notice dated 30.11.2022. Consequently, the Applicant has filed this application through Advocate under Section 95 of the Code read with Rule 7 of the IBC Rules, 2019 against *Mr. Sameer Somani*, the Personal Guarantor of the Corporate Debtor. Hence, we are inclined to allow this Application and appoint the Resolution Professional as envisaged under Section 97 of the Code.
9. It is clear that from the date of filing of this application i.e., 15.06.2023 by the Applicant that Interim Moratorium commences as stipulated under Section 96(1) of the Code in relation to all the debts of the Personal

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Sd/-

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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.

10. It shall be noted that the appointment of the Resolution Professional under Section 97 of the Code is critical and essential for the Creditor but also relevant to safeguard the assets of the Personal Guarantor in terms of the provisions of the Code. The Applicant has proposed the name of Ms. Pratibha Khandelwal as Resolution Professional. In view of this, Ms. Pratibha Khandelwal duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-002/IP-N00031/2016-17/10068 (email: cspratibhak@gmail.com), is hereby appointed as the Resolution Professional.
11. The Applicant is directed to serve the copy of this order along with copy of the Application and documents immediately on the Insolvency and Bankruptcy Board of India and file proof of service including dispatch and delivery thereof. Also, a copy of this Order and Application shall be served on the Personal Guarantor for limited purpose of presence on the next date of hearing and to be informed about the commencement of moratorium. The

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Personal Guarantor is directed to co-operate with the Resolution Professional appointed hereunder and provide all relevant information to the concerned Resolution Professional. He shall also furnish a copy of his last 3 Income Tax Returns and latest statement of affairs including, but not limited to position of assets and liabilities together with relevant documents to the Resolution Professional.

12. The Resolution Professional is directed to exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. She 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.
13. The registry is directed to provide a copy of this order to the parties as well as mail the same to the Resolution Professional.



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N. Sachdev

Assistant Registrar
National Company Law Tribunal
Jaipur

Sd/-
**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

Sd/-
**RAJEEV MEHROTRA,
TECHNICAL MEMBER**