



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI**

CP (IB) No. 12/KOB/2023

*Under section 95(1) of the Insolvency and Bankruptcy Code, 2016
read with rule 7(2) of the Insolvency and Bankruptcy (Application to
Adjudicating Authority for Insolvency Resolution Process for
Personal Guarantors to Corporate Debtor) Rules, 2019*

In the matter of:

Standard Charter Bank, Crescenzo, 3A/F Plot No. C-38& 39, Agastya Corporate Park Kamani Junction, G Block, Bandra-Kurla Complex, Mumbai- 400051;

...Financial Creditor/Petitioner

-Versus-

MR. Abdul Rehman Basheeruddin, 2, Denoar Farm Road, Near Thane Health Care Hospital, Zenith Park, Chembur, Mumbai- 400 088.

...Respondent/Personal Guarantor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through Video Conference)

For the Applicant: : Mr. Renoy Vincent, Adv.

Order reserved on: 05.07.2023

Order pronounced on: 13.07.2023

ORDER

1. Under consideration is Petitioner in CP (IB) No.12/KOB/2023 filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with 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 to as “**IB Rules, 2019**”) and regulation 4(2) of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (hereinafter referred to as “**IB Regulations, 2019**”) for initiating the Insolvency Resolution Process (hereinafter referred to as “**IR Process**”) against **Mr. Abdul Rehman Basheerudin (hereinafter called as “Personal Guarantor”)**. The Respondent /Personal Guarantor, herein has stood as a Guarantor in respect of the loans availed by the Principal Borrower/Corporate Debtor viz. Furnace Fabrica (India) Limited.

2. The factual matrix of the case is that the Financial Creditor is a Banking Company. The principal borrower company, i.e., Furnace Fabrica India Limited requested the petitioner for sanction of credit limits and on being so approached the Financial Creditor. It is averred that the consortium of four Banks presently consisting of State Bank of India (Lead Bank), Export-Import Bank of India (in place of erstwhile member bank Kotak Mahindra Bank, Axis Bank, and the petitioner (hereinafter referred to as “**Consortium**”) granted credit facilities aggregating to Rs. 288,00,00,000/- to the corporate debtor Furnace Fabrica (India) Limited *vide inter se* Agreement dated May 13, 2010. Further, the petitioner granted Consortium Facilities amounting to Rs. 30,00,00,000/- *vide* facility letter dated March, 25, 2010. The said consortium facilities were subsequently enhanced by the petitioner to Rs. 83,00,00,000/- *vide* facility letter dated February 12, 2016, while the total credit facilities granted by the Consortium were revised to Rs. 281,00,00,000/- in terms of the Supplement Inter se Agreement and Working Capital Consortium Agreement dated August 14, 2017. The consortium Facilities were secured, *inter alia*, with the finance and security documents.
3. In addition to the above Consortium Facilities, the petitioner also granted Bilateral Facilities amounting to Rs. 57,60,00,000/- to the Corporate Debtor Furnace Fabrica (India) Limited *vide* facility letter dated March, 20,2017.



Accordingly, Master credit Terms dated March 20, 2019, were executed between the petitioner and the corporate debtor.

4. It is stated that the Bilateral Facilities were secured, *inter alia*, *vide* Unattested Memorandum of Hypothecation dated August 9, 2010 and Unattested Memorandum of Hypothecation dated October, 16, 2018. All finance and security documents executed between the Corporate Debtor and the petitioner in respect of the Bilateral Facilities are collectively referred to as **“Bilateral Transaction Documents”**. The Bilateral Facilities provided to the corporate debtor were last revised to RS. 54,50,00,000/- *vide* Supplement Facility Letter dated February 27, 2021.
5. One of the conditions for sanction of the Consortium and Bilateral Facilities was that they were required to be secured with irrevocable and unconditional personal guarantees. Accordingly, the Personal Guarantor herein provided his personal guarantee by executing a Deed of Guarantee dated August 14, 2017 towards the Consortium Facilities and a Deed of Guarantee dated April 13, 2017 along with a Supplemental Deed of Guarantee dated October, 16, 2018, towards the Bilateral Facilities, for the purpose of securing the repayment of entire amount thereunder, along with necessary interest, costs, and charges (**“Guarantee Agreements”**).
6. The Corporate debtor defaulted in repayments of the Consortium and Bilateral Facilities and further failed to regularize the defaulted loan accounts, due to which the loan accounts were declared as Non-Performing Assets (**“NPA”**) on May, 31, 2022. Consequently, *vide* letter dated 2.09.2022 the Bilateral and Consortium Credit Facilities were recalled and repayment of the outstanding debt was demanded (**“Recall Notice”**) from the corporate debtor and the personal guarantor herein along with the other guarantors.



7. On September 20, 2022, a holding reply to the Recall Notice was issued by the Advocates on behalf of the corporate debtor, the Personal Guarantor herein and other Guarantors informing that they were in the process of seeking instructions on the reply to the Recall notice and a detailed reply would be issued shortly. However, pursuant thereto, neither did the petitioner receive any substantial reply to the Recall Notice nor did the corporate debtor or the Personal Guarantor approach the petitioner to discharge the outstanding debt.
8. Accordingly, the Personal Guarantor was called upon to repay the full outstanding amount under the Consortium and Bilateral Facilities as on August 31, 2022. In terms of the aforesaid Guarantee, Agreements vide letter dated September 16, 2022 and September 29, 2022 respectively (**“Guarantee Invocation Letters”**).
9. In response to the Guarantee Invocation letter dated September 16, 2022, once again only an Interim reply dated September 21, 2022 was sent to the petitioner by the Personal Guarantor, informing that their Advocates were in the process of seeking instructions and shall issue a detailed reply shortly. However, pursuant thereto, neither did the petitioner receive any substantial reply to the Guarantor Invocation Letter, nor did the personal Guarantor discharge the outstanding debt.
10. In view of the above, the applicant submits that it was constrained to issue statutory Demand Notice dated November 29, 2022 in terms of Section 95 of the I&B Code, 2016, (hereinafter referred to as **“the Code”**) read with Rule 7 (i) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate debtors) Rules, 2019 under Form B prescribed thereunder (hereinafter referred to as **“Demand Notice”**). The Personal Guarantor received the Demand Notice *vide* email dated December 1, 2022 and *vide* registered post on December 5, 2022.



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11. Petitioner further submits that pursuant to the receipt of the said statutory Demand Notice, the Personal Guarantor belatedly issued a reply dated February 15, 2023, wherein the Personal Guarantor while admitting of having executed the guarantee documents for the corporate debtor in respect of the Bilateral and Consortium facilities raised vague and frivolous contentions to deliberately evade his obligations of making payment.
12. In response, the petitioner issued a rejoinder letter dated April 19, 2023, whereby the petitioner refuted the frivolous contentions raised by the Personal Guarantor in his reply letter dated February 15, 2023 and once again called upon him to make payment of the entire outstanding debt.
13. In the above conspectus, the petitioner claims that it has a bonafide claim and the Personal Guarantor is liable to repay the outstanding debt of Rs. 55,07,03,147.98/- (Rupees Fifty- Five Crore Seven Lakh Three Thousand One Hundred Forty-Seven and Ninety -Eight Paise Only) as of February 28,2023 to the applicant. However, the Respondent/Guarantor has failed to repay the outstanding debt under the Consortium and Bilateral Facilities. The Demand notice dated 29.11.2022 is annexed with the petition and marked as **Annexure-25**. In the aforesaid circumstances, the petitioner submits that, there is a legitimate recoverable outstanding amount due and payable by the Respondent/guarantor to the petitioner a sum of Rs. 55,07,03,147.98/-.
14. Therefore, the petitioner alleges that the Personal Guarantor has Committed default in making repayment of the Loan amount to the applicant for which he has given a personal guarantee to the applicant on behalf of the Corporate Debtor.
15. In this factual conspectus, the petitioner prays for initiation of insolvency resolution process.



16. The Petitioner has averred in its petition coupled with documents that the personal guarantor stands as guarantor to the principal debtor for the loan availed by him, and the respondent failed to make the payment despite receipt of statutory notice. Thus, in all respect this petition filed under Section 95 of IBC, 2016 is complete.
17. It is made known to everyone that on filing of this petition by the petitioner /Creditor the interim-moratorium commences under section 96(1)(a) of IBC, 2016 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.
18. The Petitioner /Creditor has proposed the name of **Mr. Ram Ratan Kanoongo** for appointment as Resolution Professional. Therefore, as proposed by the Financial Creditor, Mr. Ram Ratan Kanoongo, [E-mail: ram@headwayi.com], having his address at *708, Raheja Centre, Free Press Marg, Nariman Point, Mumbai- 400 021*, having Reg. No. **IBBI/IPA-001/IP-P00070/2017-18/18/10156**, is hereby appointed as Resolution Professional, in exercise of the powers conferred on this Adjudicating Authority under section 97 of the IBC, 2016 read with 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 resolution professional has filed the required declaration in Part IV of the Petition



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19. The Resolution Professional shall exercise all the powers as enumerated under section 99 of the IBC, 2016 w/w the Rules made thereunder. He is directed to make recommendations with reasons in writing for acceptance or rejection of this petition 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 of IBC, 2016 to the petitioner/Creditor, as soon as the same is filed before this Adjudicating Authority.
20. The Petitioner/Creditor and its Counsel are hereby directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional by all modes for information and compliance.
21. For taking further course of action on the receipt of Resolution Professional report list the matter on 17.08.2023.
22. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
23. Certified Copy of this order be issued, if applied for, upon compliance of all requisite formalities.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
P. Mohan Raj
Member (Judicial)

Signed on this, 13th day of July, 2023.

Supriya_P.S.