

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-353/(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. Asha Mittal

(Personal Guarantor of M/s Hitech Grain Processing Pvt. Ltd.)
97, Chander Lok Enclave,
Pitampura, Delhi- 110034
Email id: hitecgrain@gmail.com

...Respondent/ Personal Guarantor

Coram:

SH. P.S.N. PRASAD, Hon'ble Member (Judicial)

SH. HEMANT KUMAR SARANGI, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Nitu Chaturvedi and Mr. Aditya
Raval, Advocates

Counsel for Respondent:



ORDER

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

Date: 12.08.2021

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. Asha Mittal, Personal Guarantor to the Corporate Debtor, 'M/s Hitech Grain Processing Pvt. 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 Hitech Grain Processing Pvt. Ltd), Mrs. Asha Mittal, in respect of the Outstanding debt of Rs. 209,61,09,614 (Rupees Two Hundred Nine Crore Sixty-One Lakh Nine Thousand Six Hundred Fourteen) as on 31.08.2020, 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

IB-353/ND/2021

State Bank of India (Through its authorized person Mr. S.V. Saravanan) vs. Mrs. Asha Mittal
(Personal Guarantor of M/s Hitech Grain Processing Pvt. Ltd.)



2. That the Ld. Counsel for the Applicant submitted that the Corporate Debtor i.e., M/s Hitech Grain Processing Pvt. Ltd. was admitted under Corporate Insolvency Resolution Process by an NCLT, New Delhi order dated 31.10.2019 vide IB no. 2158/(ND)/2019.
3. The Ld. Counsel for the applicant submitted that a Personal Guarantee by the suspended Director, Mrs. Asha Mittal, of the Corporate Debtor Company M/s Hitech Grain Processing Pvt. Ltd, was given to State Bank of India, vide a Deed of Guarantee dated 06.06.2017. The applicant has enclosed a copy of the Deed of Guarantee dated 06.06.2017 wherein the para (9) of the Deed of Guarantee mentions as under:

“9. Notwithstanding the said Banks' rights under and security which the Banks may have obtained or may obtain the Banks shall have fullest liberty to call upon the Guarantors to pay the principal sum not exceeding Rs. 305.00 Crores (Rs. Three Hundred and Five Crores Only together with interest as well as the cost (as between Advocate and client) charges and expenses, and/or other money for the time being due to the Bank in respect of or under the above mentioned credit facilities or any of them without requiring the Bank to realise from the Borrower the amount due to the said Banks in respect of the above mentioned credit Facilities and/or requiring the said Banks to enforce any remedies or securities available to the Bank”.



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 31.08.2020 to the Personal Guarantor, in respect of the unpaid debt due from M/s. Hitech Grain Processing Pvt. 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 05.04.2021, 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 mentioned 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 Hitech Grain



Processing Pvt. 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. Sunil Kumar Kabra, having registration number IBBI/IPA-001/IP-P01011/2017-18/11662, to act as the Resolution Professional in the Insolvency Resolution process of Mrs. Asha Mittal.
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 Hitech Grain Processing Pvt. Ltd., including the rate of interest as on 31.08.2020, amounts to Rs. 209,61,09,614/- (Rupees Two Hundred Nine Crore Sixty-One Lakh Nine Thousand Six Hundred Fourteen).
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., M/s Hitech Grain Processing Pvt. Ltd. as per the Deed of Guarantee entered between the parties through the Deed of Guarantee dated 06.06.2017.

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. Asha Mittal, the Personal Guarantor of the Corporate Debtor, (M/s. Hitech Grain processing Pvt. 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., 14.07.2021.

11. The Tribunal makes it clear that from the date of filing this Application i.e., 14.07.2021 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 regulators.

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. Sunil Kumar Kabra, bearing Registration No. IBBI/IPA-001/IP-P01011/2017-18/11662, is being confirmed by this bench for appointment as the proposed Resolution Professional in the matter.

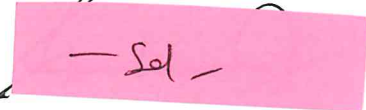


13. In this matter, the Resolution Professional, Mr. Sunil Kumar Kabra, shall exercise all the powers as enumerated under Section 99 of the Code, read with Rules made there under. He is directed to make the recommendations, with reasons in writing, for acceptance or rejection of this Application, within 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 09.09.2021.




(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

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

Ramandeep