

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-IV**

**Company Petition No. (IB)-256(ND)/2021**

**Under Section 95(1) read with Section 60(2) 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 of Personal Guarantors to Corporate Debtors), Rules, 2019**

**In the matter of:**

M/s. Ford Credit India Private Limited  
..... Financial Creditor/Applicant  
**Vs.**  
M/s. Ritu Bhatia  
..... Personal Guarantor/ Respondent

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (J)**

**SH. L.N. GUPTA, HON'BLE MEMBER (T)**

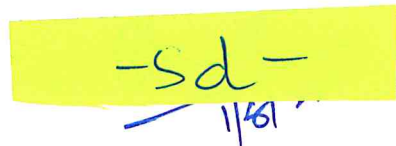
**Order Delivered on: 01.08.2022**

**ORDER**

**PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

The instant application has been filed by M/s. Ford Credit India Private Limited ('Financial Creditor/Applicant') under Section 95(1) of the Code, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019) for initiating the Insolvency Resolution Process (the "IR Process") against Ms. Ritu Bhatia ('Personal Guarantor'), Partner at Montesa Motors LLP.

2. The brief facts of the case leading to filing of this application as averred by the applicant are as follows:





- a) The applicant submits that the applicant extended and sanctioned loan facility of Dealer Wholesale Financing Agreement dated 02.08.2016 to M/s. Rain Automotive India Private Limited ('Corporate Debtor') wherein the Respondent stood as one of the personal guarantors and to that effect had executed a 'Deed of Guarantee' dated 02.08.2016 in favor of the Applicant.
- b) The applicant submits that Corporate Insolvency RESOLUTION Process was initiated against the Corporate Debtor on 14.06.2019, pursuant to the admission of C.P.(IB)/1095(ND)/2019 file by the operational creditor under Section 9 of the Code, 2016 and the applicant being the financial creditor was part of the COC holding 77.54% of the voting power. The Applicant further submits that the Corporate Debtor could not be revived and the liquidation order was passed on 02.01.2020 under CA 1623/2019 and currently the liquidation process is going at an advanced stage.
- c) The applicant submits that consequent to the non-realization of the facility sanctioned to the Corporate Debtor and guaranteed by the respondent as one of the personal guarantors, the applicant had invoked the personal guarantee furnished and extended by the respondent alongside two other personal guarantors namely Mr. Girish Bhatia and Mr. Pran Nath Bhatia.
- d) The applicant submits that the applicant had issued a demand notice in Form B dated 26.08.2020 calling upon all the three personal guarantors to jointly and severally pay a total sum of Rs. 2,59,70,606/-.
- e) The applicant submits that the said demand notice dated 26.08.2020 had been delivered to the last known address of the respondent and the same has returned unserved with the remark 'left' on the said envelope. The applicant further submits that the applicant is not aware of any other address of the respondent.
- f) The applicant submits that in accordance with the provision of the code, the present application is filed after passing 14 days of the return of the said notice dated 26.08.2020. The applicant further submits that no response has been received by the applicant.

3. We have heard Ld. Counsel for the applicant and perused the averments made in the application filed by the financial creditor. The relevant documents annexed with the application and the affidavits of service placed on record have been examined. We observe that prima facie, the respondent has committed default in making repayment of the loan amount of Rs.2,59,70,606/- for which the respondent has given personal guarantee to the applicant financial creditor on the behalf of the corporate debtor.

- Sd -



4. We observe that the demand notice has been served to the respondent/personal guarantor Ms. Ritu Bhatia by registered post, which was returned with the remark 'none resides'. We further observe that vide the order dated 23.08.2021 of this Tribunal, notice was published in the Business Standard, Delhi Edition on 05.07.2022 as and by way of substituted service.
5. At this juncture, it is worthwhile referring to the Judgment of the Hon'ble NCLAT passed in the matter of **Company Appeal (AT) (Insolvency) No. 316 of 2021- "Mr. Ravi Ajit Kulkarni vs. State Bank of India,** the Hon'ble NCLAT held :

*"42. However, considering the judgment of the Hon'ble Supreme Court in the matter of „Swiss Ribbons', it appears to us that **keeping principles of natural justice in view, limited notice of the application should be given to the Personal Guarantors of the Corporate Debtors. The limited notice has to be only to secure presence of the Personal Guarantor referring to the Interim Moratorium which has commenced. Before appointment of the Resolution Professional no hearing as such is contemplated and before appointment of the Resolution Professional the Debtor cannot be allowed to raise disputes for which the stage would be Section 100. Under NCLT Rule 11, Adjudicating Authority is duty bound to pass orders to prevent abuse of process. As such, limited notice to appear may be given to the Personal Guarantors so that when Resolution Professional is appointed, he may provide material as per Section 99(2) of IBC. Till the stage of Section 100, the process is of collecting necessary evidence.**"*

*43. The Appellant is himself criticizing the impugned order claiming that the Adjudicating Authority has already recorded finding that the Personal Guarantor has committed a default and thus the Resolution Professional cannot while examining the application under Section 99 give a contrary opinion. At the same time, the Learned Senior Counsel for the Appellant has tried to submit that before appointment of Resolution Professional the Personal Guarantor should be able to show that the debt is not due or that it is not payable. This is contradiction. **In our view, the stage for examining merits of the Application would be Section 100 of IBC. To prevent abuse of process of double hearings, first on***

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**merit before appointment of Resolution Professional and again at the stage of Section 100 which will defeat the objects of IBC by protracted disputes, after limited notice to appear has been issued even if Debtor raises disputes on merit, the same may be adjudicated only after receipt of report from Resolution Professional under Section 99.** Before that point of time the process is more of filing of application and collecting of evidence through a professional person like Resolution Professional.

44. In substance, **once the application is "filed"** (as per Section 95, 96 read with Rule 10) the Adjudicating Authority has to act on it, and **following principles of natural justice, give limited notice to Personal Guarantor to appear** referring to the Interim Moratorium that has commenced as per terms of Section 96. **Then the next stage is of appointing Resolution Professional as per Section 97 read with Rules and Regulations. Third stage will be Resolution Professional acting in terms of Section 99 and submitting Report. At the fourth stage comes in adjudication of the application under Section 100 which ought to be decided by giving hearing to parties keeping in view Application, evidence collected and report under Section 99."**

The Hon'ble NCLAT, in the aforesaid Judgment, has held that a limited notice needs to be given to secure presence of the Personal Guarantor that the Interim Moratorium has commenced.

6. In view of the above, we are inclined to proceed in the matter. Accordingly, it is made known to everyone that from the date of filing this Application (08.03.2021) by the Applicant/Financial Creditor, the interim-moratorium commences as is stipulated under Section 96 (1) (a) of the Code, 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 are prohibited :
  - a. Any legal action or proceeding pending 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.
7. Since, the appointment of Resolution Professional under Section 97 of the Code is critical and essential not only to safeguard the interest of the applicant but

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subject to the Regulation 4 (1) and (2) of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 hereby appoint Mr. Binod Kumar Singh, bearing Registration No. IBBI/IPA-001/IP-P02688/2022-2023/14108 having e-mail id binod.adv@gmail.com, Resolution Professional in the instant matter. Mr. Binod Kumar Singh is directed to submit an undertaking that he is eligible to be appointed as a resolution professional in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 and there are no disciplinary proceedings pending against him.

8. The Resolution Professional Mr. Binod Kumar Singh shall exercise all the powers as enumerated under Section 99 of the Code, 2016 read with the Rules made there under. He is directed to initiate the Insolvency Resolution (IR) Process and make the recommendations with the reasons in writing for acceptance or rejection of this Application within stipulated time as envisaged under the provisions of Section 99 of the Code, 2016. The Resolution Professional shall give a copy of the report under Sub-Section (7) of Section 99 to the Applicant/Financial Creditor, as soon as the same is filed before this Authority.
9. The Applicant and his Counsel are directed to serve the copy of this Order along with copy of the Application and documents on the Resolution Professional immediately by all modes for information and compliance.

List the matter on **23.09.2022**

Sd -

(L.N. GUPTA)

MEMBER (T)

Sd -

(DHARMINDER SINGH)

MEMBER (J)

**Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (Technical) Shri. L.N. Gupta is not holding the Court today.**

Vishal Rana  
01-08-2022  
COURT OFFICER