NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 425/ND/2023
IN
Company Petition No. (IB)-790(ND)/2022

IN THE MATTER OF:

Canara Bank
Through its Resolution Professional
Sh. Sandeep Kumar Bhatt **... Applicant/ Financial Creditor**

Versus

Shri. Krishan Pal Singh **... Personal Guarantor/ Respondent**

AND IN THE MATTER OF IA. NO. 425/ND/2023:

Sandeep Kr Bhatt
(Resolution Professional)
Having its office at
83B, Pocket-IV, Mayur Vihar-I
Delhi – 110091 **... Applicant**

Versus

1. **Canara Bank**
   Stressed Assets Management Branch
   C-34, 3rd Floor, DDA Office Cum Shopping Complex
   Defence Colony, Delhi – 110024

2. **Krishan Pal Singh**
   H.No. 648, 2nd Floor, Sector-5
   Vaishali, Gaziabad **... Respondents**

Order Delivered on: 15.01.2024

Under Section : 99 – 100 r/w 95 of IBC 2016

CORAM:

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

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

PRESENT:

For the Applicant : Adv. Saurabh Kushawaha
For the RP : CMA SK Bhatt along with CMA Kamal Deep Tyagi

ORDER

The facts of the case derived from the application filed by the Applicant are that the Principal Borrower (CD) availed loan facility from Canara Bank (erstwhile Syndicate Bank, hereinafter referred to as **"Applicant"**). The Principal Borrower viz. M/s Bulland Buildtech Pvt. Ltd. (hereinafter referred to as "**Corporate Debtor**") availed loan facilities from the Applicant, sanctioned to it in terms of the letter dated 01.07.2016 viz. a term loan of Rs. 37.80 Crs. for developing a group housing residential complex known as "Bulland Elevates" at Plot No. GH-03A, Sector-16C, admeasuring 20285.96sq. mtrs, allotted by GNIDA. The Corporate Debtor and Applicant executed the documents regarding the credit/loan facilities of Rs. 38.70 Crores and also a Composite Hypothecation Agreement to secure the credit facility availed by the Corporate Debtor. The Corporate Debtor and its Guarantors including the Personal Guarantors signed/executed irrevocable deed of guarantee dated 08.08.2016 in favour of the Applicant to secure the credit facilities availed by the Principal Borrower. As the Principal Borrower failed to repay the dues of the Applicant Bank, its account was declared as Non-Performing Asset on 29.06.2018. Thereafter, on 30.06.2018, the FC initiated fresh proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) against the personal guarantors to the Corporate Debtor/Principal Borrower including Mr. Krishan Pal Singh (hereinafter referred to as "**Respondent**") by issuing demand notice under

Sec. 13(2) demanding a total of outstanding amount of Rs. 29,14,98,274.75/-. As can be viewed from the application, the Respondent offered a consolidated One Time Settlement Proposal dated 15.09.2020 of Rs. 26 Crores to the Applicant Bank, in lieu of releasing all the guarantees/charges given/created and the same was rejected by the Applicant Bank vide its Letter dated 05.01.2021.

2. It is viewed from the record that an application bearing CP No. (IB) 1744(ND)/2019 was preferred by the Syndicate Bank (now merged with Canara Bank i.e., the present Applicant) for initiating CIRP against the Corporate Debtor/Principal Borrower (Bulland Buildtech Pvt. Ltd.) which was admitted vide order dated 22.03.2021 passed by the Hon'ble Principal Bench of this Adjudicating Authority. Thereafter the applicant issued demand notice dated 18.07.2022 under Rule 7(1) of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Rules, 2019 to the Respondent (Personal Guarantor) seeking payment of the amount of Rs. 48,81,28,128.03/- defaulted to be paid, within 14 days, reply to which given on 01.08.2022 is on record as Annexure A-13 to the application.

3. In terms of order dated 07.12.2022, Mr. Sandeep Kumar Bhatt, was appointed as RP. The RP filed its report dated 14.01.2023, stating therein that he sent the e-mail and reminder e-mails dated 16.12.2022, 21.12.2022 and 28.12.2022 to the Respondent (PG) requiring him to furnish the requisite information/documents/objection to the application to enable the RP to frame final opinion. In response to the e-mails, the Respondent (PG) submitted his

response/reply dated 03.01.2023 in physical form, on 07.01.2023, to the RP. The analysis of documents by the RP could be concluded thus:

i. The Respondent (PG) executed guarantee deed dated 08.08.2016 acknowledging the debt plus applicable interest till the date of payment for the term loan sanctioned for an amount of Rs. 37.80 Crores, on 01.07.2016.

ii. The Respondent (PG) being the Director of the CD/Principal Borrower acknowledged debt of Rs. 37.80 Crores by way of Board Resolution dated 06.08.2016.

iii. The Applicant/Creditor submitted account statement of CD/Principal Borrower proving debt of Rs. 48.94 Crores.

iv. Notice u/s 13(2) of SARFAESI was duly served by the Bank on 30.06.2018 upon the guarantor.

v. CD/Principal Borrower had given OTS proposal dated 15.09.2020 which was rejected by the Bank on 05.01.2021.

vi. Demand notice was duly served by the Bank upon the guarantor on 18.07.2022 in Form B.

vii. The Respondent (PG) submitted his reply dated 01.08.2022, to the demand notice authenticating thereby the receipt of demand notice.

The RP has further espoused his view regarding the objection dated 07.01.2023, raised by the Respondent (PG) which can be summarised as follows:

i. As regards the objection that the Respondent (PG) was director of CD till 29.09.2018 and quantum of default and cause relating thereto are not his concern, the RP submitted that the loan was sanctioned on 01.07.2016 and the date of NPA was 29.06.2018. And as per clause 3 of the guarantee deed, the guarantee is a continuing guarantee till the default is cleared (i.e., payable on demand). Moreover, the Respondent (PG) as per clause 2 of the guarantee deed dated 08.08.2016 committed to repay the dues of Rs. 37.80 Crores with interest on that amount at such rate as applicable to the borrower from time to time compounded calendar monthly, other charges, etc. from the date of demand till payment. The RP further submitted that the Respondent (PG) failed to honour the demand notice dated 18.07.2022 served upon him u/s 7(1) of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantor to Corporate Debtors) Rules, 2019. The RP also brought to forth that the guarantee will not cease on cession of directorship of the CD but is personal in nature and is continuing till the debt is paid.

ii. As regards the objection that the Applicant Bank did not approach the Adjudicating Authority seeking higher value in resolution plan instead chose to accept the resolution plan at much lower value, the RP has clarified that the acceptance of resolution plan is commercial wisdom of the CoC and cannot be challenged and that Hon'ble Tribunal is correct forum for any objection with respect to the resolution plan and not the RP.

The RP has concluded by stating that the debt is owed by the CD/ Principal Borrower qua which the Respondent (PG) is guarantor and is acknowledged by the CD and the Respondent (PG). He has buttressed that the dues with interest calculation given by applicant till 30.06.2022 amounts to Rs. 48.94 Crores and that the Respondent (PG) has failed to repay the debt within 14 days of service of demand notice.

4. On 12.07.2023, when the application came up for hearing before this Adjudicating Authority, Ld. Counsel appearing for the Applicant categorically submitted that on previous date of hearing i.e., 28.04.2023, the Ld. Counsel for Respondent/PG submitted that he had preferred a petition before Hon'ble Supreme Court challenging the vires of Sec. 95 of IBC, 2016. Nevertheless, the constitutional validity of Sections 95-100 of IBC, 2016 qua PG has already been upheld by the Hon'ble Supreme Court in terms of its judgment dated 09.11.2023 in **Dilip B. Jiwrajka vs. Union of India**, (2023 SCC OnLine SC 1530).

5. As can be seen from record, it is found that the Respondent could be proceeded ex-parte in terms of the order dated 21.12.2023.

6. On perusal of documents on record and report of RP, we found that the Applicant/Creditor has been able to establish the 'debt' and 'default' beyond doubt in respect of the Guarantee given by the Respondent/Personal Guarantor. In view of the aforementioned, we are inclined to accept the report of the RP filed by him under Section 99 of the IBC, 2016 and admit the present application filed by the Applicant/Creditor and accordingly, order commencement of the IR process in respect of Mr. Krishan Pal Singh, Respondent/Personal Guarantor with immediate effect.

7. There is no request by the RP for the purpose of conducting negotiation between the debtor and the creditors. As a sequel of admission of the present application, a moratorium shall commence in relation to all the debts of the Respondent. During the moratorium period – (a) any pending legal action or proceedings in respect of any debt qua the Respondent shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt qua the Respondent; and (c) the debtors shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficiary interest therein. The moratorium shall cease to have effect at the end of period of 180 days.

8. A public notice shall be issued by the RP within seven days of passing of this order, inviting claim from all creditors within 21 days of such notice. The notice shall include details of the present order, particulars of the Resolution Professional with whom the claims have to be registered and the last date for the submission of the claims. The notice shall be – (a) published in English and one Vernacular Language newspaper which is in circulation in the State where the debtor resides; (b) affixed in the premises of this Adjudicating Authority; and (c) placed on the website of the Adjudicating Authority.

9. We are sanguine that the RP shall discharge all such duties as are incumbent upon him in terms of the provisions of Sections 104, 105, 106 , 107, 108, 112 and 113 of IBC, 2016, with the due deference of the procedure enshrined in Regulations 5, 7, 8, 9, 11, 12, 13, 14, 15 and 17 of IBBI (Insolvency Resolution Process for Personal Guarantor to Corporate Debtors) Regulations, 2019 and also in terms of the other extent provisions of the

aforementioned code/ regulations and/or any other provisions of law applicable to him, in discharge of his duties as RP.

10. A copy of this order along with the copy of the application as also the report of Resolution Professional shall be provided to the Creditor (Applicant), Personal Guarantor (Respondent) and IBBI, by the Registry/Court Master within 7 days from today by email.

11. **IA 425/ND/2023 is disposed of accordingly. To come up for consideration of Status Report to be filed by RP, within 8 weeks.**

Sd/-	**Sd/-**
(SUBRATA KUMAR DASH)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**